

**TOWN OF EAST GREENBUSH
ZONING BOARD OF APPEALS**

TOWN HALL, 225 COLUMBIA TURNPIKE, RENSSELAER, NY 12144 (518) 477-2005 EXT. 226 FAX (518) 477-2386

MEMORANDUM

**EAST GREENBUSH ZONING BOARD OF APPEALS
MEETING MINUTES
September 28, 2010**

Members

Jeff Pangburn
Judith Condo
Steve Millens
Joyce Lapham
Robert Seward

Also Present:

Donna Moran, Stenographer
Tim Nugent, Attorney
Angelina Cadena, acting ZBA
Secretary

CALL TO ORDER / DETERMINATION OF QUORUM

Chairman Pangburn called the meeting to order and determined a quorum of five (5) members were present. Introductions were made. Lou Polsinello and Bill Ritz were absent.

APPROVAL OF MINUTES

Mr. Seward made a motion to approve of the minutes of 8/10, 8/24, and 9/14.
Second by Steve Millens & MOTION CARRIED BY A 5-0-0 VOTE

APPLICATION COMPLETE - SEQR CLASSIFICATION:

#2010-21 Kelly – 2 Area Variances: Lot 6 Fieldcrest (9/14)

In regards to **Appeal #2010-21: Kelly - Application for Area Variances**, the Zoning Board of Appeals has considered this project under SEQR and determines that this project meets the requirements for a **Type II Action** and no further SEQR review is required.

#2010-25 Witbeck – Special Use Permit: Social Club: 594 Col. Tpk (9/28)

MOTION: A motion was made by Jeff Pangburn as follows: In regards to **Appeal #2010-25: Witbeck - Application for Special Use Permit – Social Club**, the Zoning Board of Appeals is progressing an uncoordinated review under SEQRA, declares itself Lead Agency, and determines that this is an **Unlisted Action**.

Second by Judy Condo & roll called as follows:

J. Pangburn – YES; J. Condo -YES; J. Lapham -YES; S. Millens –YES; R. Seward –YES

MOTION CARRIED BY A 5-0 VOTE

#2010-27 Gamache – Area Variance: Front Porch @ 16 Western (9/28)

In regards to Appeal #2010-27: Gamache - Application for Area Variance, the Zoning Board of Appeals has considered this project under SEQR and determines that this project meets the requirements for a Type II Action and no further SEQR review is required.

#2010-28 Davis, Jr. – Area Variance: Garage @ 30 Clinton (9/28)

In regards to Appeal #2010-28: Davis - Application for Area Variances, the Zoning Board of Appeals has considered this project under SEQR and determines that this project meets the requirements for a Type II Action and no further SEQR review is required.

PUBLIC HEARINGS:

#2010-02 Malone – Use Variance: Used Auto Sales @ 7 Troy Road (Continued)

The above applicant is proposing to operate a business of Automotive sales, new and used, and to build a 16' x 30' addition off the rear of the building on the South end and a 7' x 12' addition off the rear of the building on the North end of the property located at 7 Troy Road, Tax map # 166.15-4-7.1. This property is in the B-1 Zoning District. Therefore, the applicant is applying for a Use Variance and two Area Variances.

Pangburn re-opened the public hearing. The public hearing was adjourned August 24, 2010. Pangburn stated that since the Automotive Service Facility received a Use Variance in 2009, that use is now considered a conforming use and there is no need for the 2 Area Variances to expand the use. The applicant was encouraged to follow up with the building department on the next steps with regards to the additions.

Being addressed is the Use Variance to sell automobiles at 7 Troy Road. The applicant, Bill Malone, presented the board with financial reports (exhibit B) stating the need for the sale of automobiles to keep in business profitable. Financial reports showed a net income loss.

Pangburn read aloud previous planning board minutes and conditions on prior approvals on the project.

No one was present to speak in favor or against the application.

Motion to close by Steven Millens – seconded by Joyce Lapham. Carried 5-0 vote

#2010-21 Kelly – 2 Area Variances – Lot 6 Fieldcrest (9/14)

The applicant Richard Kelly is proposing to subdivide the existing 9.84 acre parcel into two lots with less than 200 foot frontages which is in violation of the Town's Comprehensive Zoning Law, Section II, Sub-Section 2.6.3 Residential District (R-B), E Area and Bulk Schedule where a minimum frontage of 200 feet is required to build and the property owner only has 92 and 94 feet. Therefore, the applicant is applying for two Area Variances.

Pangburn opened the public hearing and read aloud the legal notice.

Applicant Richard Kelly was present. Attorney Mark Sweeney presented the application to the board. Fieldcrest was an approved 6 lot subdivision. The applicant is proposing to subdivide lot #6. The proposed lot #6 will be used for Mr. Kelly's single family home and the new lot 7 will be sold. Multiple neighbors are in support of the application. A sign petition in favor of the application was submitted to the board (exhibit D).

Al Yasses (147 horizon view drive), Tim Drew, and Josh Drew were in opposition of the project. Written comments were submitted to the board (exhibit A).

**Motion to close by Steven Millens – seconded by Jeff Pangburn.
Carried 5-0 vote**

#2010-25 Witbeck – Special Use Permit: Social Club: 594 Col. Tpk (9/28)

An application has been filed by Robert and Marjorie Witbeck, owner of 594 Columbia Turnpike, East Greenbush, NY, proposing to operate a social club in a B-1 Zoning District, which according to the Town's Comprehensive Zoning Law, Section II, Table II-a - Use Schedule: Recreation; private, social club requires a Special Use Permit; Therefore, the applicant is applying for a Special Use variance.

Chairman Pangburn opened the public hearing and read aloud the legal notice.

Attorney Charles Assini presented the application to the board. Mr. Assini presented the board with non-for-profit corporation law (exhibit A) and pictures of the site (exhibit B, C, & D). The purpose of the social club is for games such as poker. They also have fundraisers. Members will be required to pay dues and non-members will not be allowed. The members will be allowed to have guests, and fundraiser may have other attendees too.

Issues from the board are adequate parking and gambling. The attorney stated there are poker tournaments and the winners win money. Bill Hart, the social director, explained that parking hasn't been an issue there. There's adequate parking on site for the daily members. When there are event/fundraisers they are schedule on days/times that Auto Zone, Citizen's bank, and CVS in Hannaford plaza are closed. The club has permission from Robert Witbeck to use the parking lot in Hannaford plaza.

The board would like a site plan showing how the parcel will be used, parking on-site along with circulation, cross-access agreements and provisions for the overflow of parking. No further questions from the board.

The applicant adjourned the public hearing until requested information is presented to the board. Public hearing adjourned until October 12th, 2010.

#2010-27 Gamache –Area Variance: Front Porch @ 16 Western (9/28)

The above applicant is proposing to replace the existing front porch with a new 19'6"x 8' porch. The property is located in the R-2 Zoning District. This is in violation of the Town's Comprehensive Zoning Law, Section II Sub section 2.6.5 Residential District R-2 where you need 25'(feet) from the front property line, the applicant only has 19'(feet). Therefore, an Area Variance is required.

Chairman Pangburn opened the public hearing and read aloud the legal notice. Barbie and Christi Gamache present the application to the board. Exhibit A, drawings of the proposed porch were given to the board.

A motion to close the public hearing was made by Steve Millens and seconded by Robert Seward. Motion carried by 5-0 vote.

#2010-28 Davis, Jr. – Area Variance: Garage @ 30 Clinton (9/28)

The above applicant is proposing to construct a 24'x 24' detached garage located on the footprint of the existing garage. The property is located in the R-2 Zoning District. This is in violation of the Town's Comprehensive Zoning Law, Section 2.51 D06(a) Area and Bulk Schedule. The required front yard setback distance is 25 feet. The proposed garage will leave a front setback distance of approximately 18 feet. The required rear setback distance is 25 feet. The proposed garage will leave a rear setback distance of 3 feet. Therefore, two Area Variances are required.

Chairman Pangburn opened the public hearing and read aloud the legal notice. Joseph Davis presented the application to the board.

A motion to close the public hearing was made by Steve Millens and seconded by Joyce Lapham. Motion carried by 5-0 vote.

WORKSHOP/DELIBERATION

#2010-02 Malone – Use Variance: Used Auto Sales @ 7 Troy Road (8/24)

Discussion – Use variances are difficult to grant. Due to the economic conditions we do not want another empty business in East Greenbush. Several Court cases where Use Variances were denied were referenced that had similar characteristics. The property can be used at its current zone as the applicant desires to make additions to expand the current use.

Pangburn makes a motion in reference in the use variance – the applicant failed to show substantial financial loss.

1. The applicant failed to provide sufficient financial evidence to substantiate that he **cannot realize a reasonable rate of return.**

2. The property does not suffer a **unique** hardship as it is currently occupied by the auto service facility and is in character with surrounding parcels.
3. The Use Variance **will not alter the essential character of the neighborhood** as auto sales exist on nearby parcels.
4. The alleged hardship **has been self-created** as the applicant acknowledge in the original appeal 2009-10 for a Use Variance to operate the Auto Service Facility that he would not sell Used Cars and then purchased the property under its current zoning.

Resolved, that the application for a Use Variance for Automotive Sales, new and Used be DENIED.

This resolution was moved by Jeff Pangburn and seconded by Joyce Lapham at a meeting duly held on September 28, 2010.

A vote was taken as follows:

Judith Condo	<u> y </u>
Joyce Lapham	<u> y </u>
Steve Millens	<u> n </u>
Jeff Pangburn	<u> y </u>
Lou Polsinello III	<u> absent </u>
William Ritz III	<u> absent </u>
Bob Seward III	<u> y </u>

Appeal denied 4-1-0 vote

#2010-21 Kelly – 2 Area Variances: Lot 6 Fieldcrest (9/14)

Discussion

- Negative recommendation from the planning board
- County of Rensselaer: Bureau of Economic Development & Planning – local consideration shall prevail

Member Millens – points out that it's 2 houses on 10 acres. Issue raised that it's a further subdivision of a subdivision – The dilemma is that this phase wasn't discussed in its original application Member Millens points out that the economic conditions have changed. Condo is impressed in the number of people in favor of the application. Pangburn states we should address the application with the 5 characters

Resolved, That the Board of Appeals makes the following findings of fact:

1. There will NOT be an undesirable change in the character of the neighborhood as – lots will generally be the same size as other lots if not larger

2. There is no other method available to the applicant as – There is another method to the applicant but it isn't feasible – An extension of the road is not feasible.
3. The requested variance is NOT substantial – the variance is 50%
4. The proposed variance will not have an adverse effect on the neighborhood -
5. The alleged difficulty is self-created; however, it should not preclude the granting of the variances.

Resolved, that the application for two Area Variances for frontage widths equal to 92 and 94 feet be **GRANTED** with one **condition(s)**:

1. approval of maps are not to be sign until proof of deed restrictions and/or indication on maps

This resolution was moved by Robert Seward and seconded by Judith Condo at a meeting duly held on September 28, 2010.

(Discussion) – modify resolution – There will be no further subdivisions

A vote was taken as follows:

Judith Condo	<u> y </u>
Joyce Lapham	<u> y </u>
Steve Millens	<u> y </u>
Jeff Pangburn	<u> n </u>
Lou Polsinello III	<u> absent </u>
William Ritz III	<u> absent </u>
Bob Seward III	<u> y </u>

Motion carried by a 4-1-0 vote.

SEQR DETERMINATION & RECOMMENDATION

#2010-02 Malone – Use Variance: Used Auto Sales @ 7 Troy Road (8/24)

Pangburn made a motion to issue a Negative Declaration under SEQR – second by Steve Millens: 5-0-0 Vote

#2010-25 Witbeck – Special Use Permit: Social Club: 594 Col. Tpk (9/28) – tabled

OLD BUSINESS

STATUS - New Appeals

- #2010-16 Cronin – Area Variance: awnings w/text @ 715 Col Tpk (withdrawn)
- #2010-24 Van Dehouten – Area Variance: Monument Sign – 4 Ridge (Incom)
- #2010-26 Tracey – Use Variance: Chickens @ 10 Columbia Dr (withdrawn)
- #2010-29 HKM Properties (DD) – Use & Area Variances @ 563 Col Tpk (Incom)

NEXT MEETING: October 12, 2010

MOTION TO ADJORN

There being no further business before the Board, the meeting was adjourned.

Respectfully Submitted

Angelina Cadena, Acting ZBA Secretary