

Chairperson Michael Kunzer called the regular meeting of the Zoning Board of Appeals of the Town of Walworth to order at 7:00 PM. The members present were Michael Kunzer, Christine Kubida and Becky Appleman. Phil Williamson, Code Enforcement Officer was also present. Tiffany Paine-Cirrincone and Charles Buss, Zoning Board members, were absent from the meeting. Due to the COVID-19 pandemic and to comply with CDC social distancing, the meeting was held at the Walworth Town Hall, accessible live to the public.

Chairperson Kunzer asked if there were any corrections to the minutes of September 8, 2020. No issues or concerns were brought forward. Becky Appleman made a motion, seconded by Christine Kubida, to approve the minutes of September 8, 2020 as written. All members were in favor. Motion carried.

Chairperson Kunzer addressed the first item on the Agenda.

**1. Application of Joseph Villnave seeking a use variance for the property located at 4309 Ontario Center Road that does not comply with the required zoned use. The applicant seeks relief from Section 180-10 (A) (1), RR1 Districts: Single Family Residential. Property is zoned RR1- Rural Residential 1. (Public Hearing)**

Chairperson Kunzer opened the public hearing at 7:11 PM.

Joseph Villnave came forward to speak before the Board. Mr. Villnave said he would like to build a 2-family duplex which would be adjacent to 2 other duplexes. Mr. Villnave said he has a 2-acre parcel that is useless right now since it is near the gun club that has no noise restrictions, and it is therefore not a desirable lot to build a single-family home. Mr. Villnave said he advertised the lot for sale for 2 months and did not receive any calls or offers for the property. Mr. Villnave said the lot is more desirable for a rental property since people do not stay long term. Mr. Villnave said the neighbors have no objections, and he has had good tenants in his current rental property.

Ms. Kubida asked Mr. Villnave who he had the property listed with and how he determined the value for the listing. Mr. Villnave said it was listed with Gerber Homes and he previously sold an approved lot up the road 2 years ago for \$39,900. Ms. Kubida asked if Mr. Villnave submitted any comparable properties to the Board since his property runs to the higher end of the per acre price of currently listed properties in the area. Mr. Villnave said there is a property on the corner of Atlantic and Route 350 that is listed for \$29,900. Ms. Kubida said most properties have been listed a significant amount of time. Mr. Villnave said he did not have a sign showing the property is for sale, and he has owned the property for about 15 years. Ms. Kubida asked if Mr. Villnave could show any documents with the amount he paid for the property and money invested into the property to demonstrate that he will be at a substantial financial loss if he sells the property. Chairperson Kunzer said Mr. Villnave could show what a single-family home would be worth on that location and what a duplex would be worth. Mr. Villnave said a rental property is a long-term investment so it would take years to recoup his income, but a single-family home would be an immediate loss since he will not recoup the money he put into it. Chairperson Kunzer said Mr. Villnave need to show in dollars and cents he cannot make a reasonable return. Ms. Appleman asked why someone would live in a duplex but not a single-family home in that location. Ms. Kubida said the listing states the "Property is located off of a shared driveway with three duplex homes, the property is not approved for a duplex home and would need to be a single-family home. The property is adjacent to the Walworth Rod and Gun Club" and it states that the property is "Raw Land". Mr. Villnave said none of the neighbors have made any objections, the duplex will be off the road and hard to see, and there are already 3 existing duplexes. Ms. Appleman said there is a single-family residence in the area and this duplex will lower their property value. Ms. Kubida said Mr. Villnave needs to meet the following four criteria according to New York State regulations:

1. Self-created Hardship: ...a use variance cannot be granted where the "unnecessary hardship" complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition she/he now complains of.
2. Unique Circumstances: ...an applicant for a use variance must adhere to under the state statutes, is that the property's plight is due to unique circumstances and not to general neighborhood conditions.
3. Reasonable Return: ... the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
4. Essential Character of the Neighborhood: ... the requested use variance, if granted, will not alter the essential character of the neighborhood.

Chairperson Kunzer said Mr. Villnave knew the gun club was there when he brought the property and the gun club does not affect just Mr. Villnave so it is not a unique circumstance. Mr. Villnave said the gun club had noise limitations when he bought the property. Mr. Williamson said per New York regulations: "As the use variance grants permission to the owner to do what the use regulations prohibit, this power of the board of appeals must be exercised very carefully lest there be serious conflict with the overall zoning scheme for the community. The showing required for entitlement to a use variance is therefore intended to be a difficult one."

Chairperson Kunzer said that the property was listed for a short amount of time for an exorbitant price. Ms. Kubida said the gun club does affect other properties which therefore removes the unique circumstance. Mr. Villnave said nobody would want to build a single-family house on a private drive with 3 existing duplexes.

Chairperson Kunzer asked if there were any comments from the public. No issues were brought forward. Chairperson Kunzer closed the public hearing at 7:36 PM.

Chairperson Kunzer said the property was for sale for a short amount of time, the price was high, and there was no sign by the street. Ms. Appleman said the price was high for the location of the property.

Chairperson Kunzer asked if there were any more comments from the Board. No more issues were brought forward.

Chairperson Kunzer read the Town of Walworth Zoning Board of Appeals Use Variance Determination Resolution:

With regard to Application at 4309 Ontario Center Road for a use variance requesting relief from Town Code Section 180-10 (A) (1), Single Family Residential.

WHEREAS, a public hearing with regard to said Application was duly advertised and held, and

WHEREAS, the Zoning Board of Appeals has taken into consideration the benefit to the applicant as weighted against the potential detriment of the health, safety and welfare of the neighborhood or community in relation to such Variance; and

WHEREAS, the Zoning Board of Appeals has considered all relevant information, now therefore, be it

RESOLVED, that the Zoning Board of Appeals make the following finding of fact regarding the variance:

- 1) The variance **will not** result in an undesirable change to the character of the neighborhood or a detriment to nearby properties since there are existing duplexes there already.
- 2) The applicant **cannot** realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence since the applicant listed the property for sale and did not have any interest in it for 60 days.
- 3) The properties plight **is not** due to unique circumstances and is due to general neighborhood conditions since there are other homes in the neighborhood with the same circumstances.
- 4) The difficulty resulting in the request for the variance **was** self-created because the gun club existed when Mr. Villnave purchased the parcel.

AND, BE IT FURTHER, RESOLVED, that based upon said finds, the Zoning Board of Appeals hereby determined that said variance is denied.

Christine Kubida made a motion, seconded by Becky Appleman, to deny Joseph Villnave the requested use variance.

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| Roll Vote: | Chairperson Kunzer | Aye |
|            | Christine Kubida   | Aye |
|            | Becky Appleman     | Aye |

Motion carried.

Chairperson Kunzer addressed the second item on the Agenda.

**2. Application of Mark Herrmann seeking an area variance for the property located at 5530 Ontario Center Road that does not comply with the required setback. The applicant seeks relief from Section 180-10 (F) (1), 180-21 (A) (B), and 180-29 (A) Setback Requirements. Property is zoned RR1-Rural Residential 1. (Public Hearing)**

The applicant was not present to speak before the Board. Mr. Williamson advised the Board that they can address the application without the applicant being present since the Board has the information needed to proceed. Chairperson Kunzer said the applicant is seeking to place a generator in the front of his house.

Chairperson Kunzer opened and closed the public hearing at 7:51 PM since there was nobody from the public present to speak before the Board. Ms. Appleman said the applicant does not have any place else to put the generator. Chairperson Kunzer said the back corner of the house is 8 feet from the side property line, and the house is 32 feet to the right-of-way which means the house is already in the required 75-foot front setback. Ms. Appleman said the generator needs to be at least 5 feet from any window, it cannot go on the driveway side, and there is septic in the back of the house. Chairperson Kunzer said there is a row of evergreen trees between the road and the proposed location of the generator, and it would create less noise for the neighbors to the side of the property if it is in the front of the house. Chairperson Kunzer said the generator will have to be built and placed per the NY State Mandates. Ms. Appleman said the Building Inspector has reviewed the application and will inspect the generator.

Chairperson Kunzer asked if there were any more comments from the Board. No more issues were brought forward.

Chairperson Kunzer read the Town of Walworth Zoning Board of Appeals Variance Determination Resolution:

With regard to Application at 5530 Ontario Center Road for an area variance requesting relief from Town Code Section 180-10 (F) (1), 180-21 (A) (B), and 180-29 (A), Setback Requirements.

WHEREAS, a public hearing with regard to said Application was duly advertised and held, and

WHEREAS, the Zoning Board of Appeals has taken into consideration the benefit to the applicant as weighted against the potential detriment of the health, safety and welfare of the neighborhood or community in relation to such Variance; and

WHEREAS, the Zoning Board of Appeals has considered all relevant information, now therefore, be it

RESOLVED, that the Zoning Board of Appeals make the following finding of fact regarding the variance:

- 1) The granting of the variance **will not** result in an undesirable change to the character of the neighborhood or a detriment to nearby properties since it will not affect the nearby parcels.
- 2) The variance being sought by the applicant **cannot** be achieved by some other feasible alternative because it is limited to where the generator can be placed.
- 3) The area variance **is not** substantial since the pre-existing house is already into the setbacks.

- 4) The variance **will not** have a negative effect or impact on the physical or environmental conditions in the neighborhood since the house is far enough away and there are trees hiding it.
- 5) The difficulty resulting in the request for the variance **was not** self-created because the owner bought the house where it sits, but this factor is merely a consideration and is not necessarily determinative.

AND, BE IT FURTHER, RESOLVED, that based upon said finds, the Zoning Board of Appeals hereby determined that said variance is approved.

Becky Appleman made a motion, seconded by Christine Kubida, to grant Mark Herrmann the requested area variance.

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| Roll Vote: | Chairperson Kunzer | Aye |
|            | Christine Kubida   | Aye |
|            | Charles Buss       | Aye |

Motion carried.

Chairperson Kunzer adjourned the meeting at 8:01 PM.

Respectfully submitted,

Barbara Goulette, Clerk