

ZONING BOARD OF APPEALS

JUNE 20, 2016 MEETING MINUTES

Present: Chairman Ron Nolland, Kathleen Insley, Scott DeMane,
Connie Fisher, Kellie Porter (Alt)
Joe McMahon, Building Inspector

ABSENT: April Kasper (Alt.), Kathy Latinville (Alt.)

Also Present:

Appeal #2071 Betty Jock
Appeal #2075 Amber & Bryan Frank
Appeal #2076 Kathie Cameron Murray
Joshua Kretser

Mr. Nolland called the meeting to order at 7:02 PM. The following items were on tonight's agenda.

APPEAL	APPLICANT	REQUEST
2071	BETTY JOCK 16 ELIZABETH STREET	CLASS B VARIANCE ADD BEDROOM AND BATH TO REAR OF HOUSE WHICH ENCROACHES IN SIDE YARD SETBACK
2075	AMBER FRANK 9 ELIZABETH STREET	SPECIAL USE PERMIT REQUEST TO INSTALL 8' FENCE
2076	KATHIE CAMERON MURRAY 61 PROSPECT AVENUE	CLASS B VARIANCE REQUEST TO WIDEN DRIVEWAY IN FRONT YARD

The items will be heard in the order as stated above.

Mr. Nolland reminded the applicants this is a 5 member board. There are 5 members present for tonight's meeting. The applicant has the right to have 5 members vote. The applicant needs 3 positive votes to pass a motion.

There is a conflict with Kelly Porter with Appeal #2071 16 Elizabeth Street. The applicant can ask for a postponement if he/she feels this is not going well.

The **first** item heard was Appeal #2071 Betty Jock, 16 Elizabeth Street, for a Class B Variance to add bedroom and bath to rear of house which encroaches in side yard setback.

[Meter 2:53]

Correspondence was received from neighbor Joyce Pelkey, 18 Elizabeth Street stating she objects to granting this variance without a survey.

Ms. Jock advised she has called quite a few surveyors. One finally responded but did not show up. Mr. Nolland advised just because a neighbor wants a survey doesn't mean she should or shouldn't have or need a survey. But the Board wants to be careful and the concern is the applicant shows 38-1/2 feet and the tax map shows 33 feet. They cannot tell the correct dimensions in the side yards. Another problem is very hard to give a variance for 3' away from a property line.

BOARD COMMENTS:

Ms. Fisher asked if a mechanical chair had been looked into to go up and down stairs. Ms. Jock said yes but her stairwell is not wide enough for this installation. The stairwell could not be made wider due to the way her living room is laid out. The stairwell is right as you go into the room with a wall in the way. She would have to knock out the whole wall. Ms. Jock also advised she is sleeping in her living room due to the pain of going up and down the stairs.

Ms. Jock has looked into selling this house but owes too much on the home to buy another home. She added this is not the ideal solution but the best she could come up with.

Ms. Porter said the only way to have definitive numbers is to have the survey done.
[Meter 9:06]

Mr. Nolland explained about the "granting of variances (uniqueness of properties)." [Meter 10:17] This variance appeal solution exceeds the boundaries of what they normally grant a variance for. He then suggested a postponement and have the applicant find out where the 33' is. Get a better handle on how big her lot is and sit with her contractor and see how she can get this addition on her lot with the amount of property she has. He also requested to re-position the addition to an "angel" following the property. She needs about 20' combined side yard – 8' on one side and 12 on the other. Then come back to the board with a solution.

Ms. Insley asked if she has checked with her neighbors to see if any of them have survey's that were every done at any time. Ms. Jock hadn't. Ms. Insley also suggested maybe an adjustment of property lines with her neighbors.

MOTION:

By Ms. Fisher, seconded by Ms. Insley,

TO POSTPONE APPEAL #2071 FOR 90 DAYS ON THE BOARDS BEHALF

ALL IN FAVOR: 5

Mr. Nolland reminded the applicant to get accurate dimensions.

The **second** item on the agenda was Appeal #2075 Amber Frank at 9 Elizabeth Street for a Special Use Permit (SUP) requesting to install an 8' fence.

[Meter 16:54]

Mr. Nolland advised unless this is detrimental to the neighborhood a SUP is a matter of right and the zoning board grants them.

Bryan Frank explained The Store Tavern is in their back yard. A variance was just granted for Judith Budall for an 8' fence and she lives right next to the Store Tavern.

Ms. Frank advised there were horseshoe pits right behind her property. Also a lean-to. Mr. Frank referred to the map of their property and surrounding property. In 2010, The Store Tavern applied to the NYS Liquor Authority to extend the area in where they can serve alcohol on his property in the entire back. The liquor authority does not notify the properties around a request. Mr. Frank advised it's basically been a complete nightmare for almost as long as they have lived at this location. They have never been able to have a gathering or friends over and frankly they are trying to move. However the real estate agent said it would be very difficult to sell this property because of the Tavern and things going on at the Tavern on a nightly basis.

At that time Mr. Frank played back a recording of the people and noise at the Store Tavern back yard. [Meter 20:46]

Ms. Frank added they cannot even have the back windows open. Her daughter's bedroom is there and she cannot leave the window open without the air conditioner on to drown out the noise.

Mr. Frank advised the City Police will not issue a noise ordinance violation because it's a commercial zone grandfathered in property, which is never been in dispute. The only dispute he's had is they would like to get in front of a judge to actually get a voice to be heard. From the first paragraph of the noise ordinance in Plattsburgh it's a complete violation. The steps they've already taken, along with several phone calls to the Police Department – inspecting damage to the fence that's been done already and is pretty much destroyed. Ms. Frank said they've been calling for 6 years. Patrons from the Store TAVERN use a small piece of the current fence after 2:00 AM to go through the Frank's property so they don't have to walk around.

Mr. Frank continued stating he learned about the NYS Liquor Authority Laws. They are in violation of the NYS Liquor Law for serving intoxicated persons alcohol. He witnessed this last night. There was a women so intoxicated she couldn't talk or walk. This was at 7:00 at night. She had a draft beer in a clear cup in her hand. If his kids are back there by themselves they could easily stumble in through the current fence.

Ms. Frank tried on a couple of occasions to let the patrons know they have children and they told her it's a bar and they should move.

Mr. Frank stated The Store Tavern has never applied for building permits to build any of the structures in the back. There were no electrical permits either. He spoke further about a 30' tall 20' wide tarps that they throw up 2 flag poles. If a gust of wind comes these tarps could come into his yard and he is concerned about his children. There have many concerns. After 10 years they would like to use their back yard once in a while.

Mr. Nolland then read a letter into the record from Mary Gertsch-Cochran, 11 Elizabeth Street. (Attached hereto and made a part hereof.) [Meter 25:00]

Mr. Nolland stated this was a good letter and the zoning board hardly ever hears anything about these things except if there are variances required. He was surprised about all this happening and did not know what could be done about this. He requested to know what is not a legal structure and considered an accessory structure, installed without a permit, how many they can have, what they can do.

Noise generated should not pass the property line. Mr. Nolland gave examples of what is allowed and not allowed. He spoke further about "normal" activity/noise at a normal time on your property. This is a residential neighborhood being R-2. But he is not so sure the answer is "oh it's commercial property so that can make as much noise as they want." This was a Police response. Someone needs to find out about this. All neighborhoods have their problems but not like this.

Mr. Nolland then stated the zoning board is here to protect quality of life. That is what this board is supposed to be about. The SUP for a permit is not the answer to this problem but will help. Mr. Frank advised they are working with the Liquor Authority. Mr. Nolland felt this needed a multi-agency discipline. [Meter 33:10]. Speak with the City Police.

Mr. DeMane questioned how the Liquor Authority can expand the allowable use on a grandfathered in property. Mr. McMahon advised a bar is not allowed in an R-2. It's a pre-existing non-conforming use. Mr. Nolland questioned whether the Store Tavern has been allowed to expand a non-conforming use without coming to the Zoning Board.

Mr. Nolland asked the Building Inspector if the Store Tavern ever got a permit for anything outside and why they were allowed to expand a non-conforming use in a neighborhood without coming to see the Zoning Board. He will also ask other state agencies including the Health Dept. and/or Liquor Authority if they have allowed the expansion of this use.

Mr. Frank advised the City of NY is required to run an ad in the paper 3 weeks before any intended change to a liquor license or renew it and 90 days before it's due it has to be brought up in front of the City of New York.

Mr. Nolland said they will follow up on this part. Mr. McMahon thought the City attorney should be involved in this and asked the Frank's if they wanted to go to a 10' fence, since it is allowed in the ordinance. Ms. Frank said she submitted a letter to the Mayor 3 weeks ago. Mr. McMahon advised the Mayor is looking into this.

PUBLIC COMMENTS:

There being none, the chairman closed the Public Hearing portion of the meeting.
[Meter 39:10]

LONG FORM SEQ:

Page 1 of 13	Change 8' to 10'.
Page 2 of 13	Change C2 to "Yes."
Page 8 of 13	R. Change "No" to Yes."
Page 13 of 13	H. Add "Lake Champlain"

MOTION:

By Mr. DeMane, seconded by Ms. Porter

REGARDS TO THE FULL ENVIRONMENTAL ASSESSMENT FORM PART 1 FOR APPEAL
#2075 FOR AMBER FRANK, SPECIAL USE PERMIT TO ERECT UP TO A 10' TALL
FENCE THAT UPON REVIEW THE ANSWERS IN PART 1 THAT THIS PROJECT WILL
HAVE LITTLE OR NO ADVERSE ENVIRONMENTAL IMPACT

ALL IN FAVOR: 5

MOTION:

By Mr. DeMane, seconded by Ms. Insley

IN REGARDS TO APPEAL #2075 FOR AMBER FRANK SPECIAL USE PERMIT TO
INSTALL UP TO A 10' FENCE IN THE BACK YARD AS LAID OUT IN THE PLANS AND A
YES VOTE WOULD GRANT THE SPECIAL USE PERMIT

ALL IN FAVOR: 5

OPPOSED: 0

MOTION PASSED

Mr. Nolland thanked the applicants for letting them know about this problem and reiterated he will follow this up. He spoke about people who "go ahead and proceed with work" and then come and ask the zoning board for permission.

The **final** item on the agenda was Appeal #2076, Kathie Cameron Murray, 61 Prospect Avenue for a Class B Variance requesting to widen driveway in front yard.

[Meter 48:21

Mr. Nolland advised the board is not very nice about driveways in a front yard. It's a problem when people park all the cars in the front.

Ms. Porter recused herself from hearing this appeal.

The whole point of the ordinance is to have the 25' in front of the house clear vision-wise so there are not all those cars parked. But the aerial photograph shows all double driveways. Many have single car garages but the board does try to minimize in some ways.

Mr. Nolland said the sketch provided was hard to understand. The driveway will go on the right side of this property and back next to the garage. The applicant and board referred to the site drawing.

A driveway is not a parking space. A driveway gets to a parking space. If she creates a parking space on the side of the garage and it's still 3' from the property line that's a legal parking space. She is allowed to do that and allowed to get to it.

Mr. McMahon then referred to the picture of the lot referring to the tire tracks. The parking space as it was legally created adjacent to the garage (the entire space behind the front of that garage) then the BI office would have to legally give her the right to that space and access to it.

Mr. McMahon thought her plan seems to indicate that she wants to come straight out all the way past the sidewalk. If she creates a legal parking space which adjacent to the garage would be as long as she is 3' from property line in the entire space which is minimum of 18' deep then he would have to grant her access to that space. He doesn't have to grant her all the way straight down because it would create too much parking in the front yard.

[Further discussion about parking on street, coming out straight to sidewalk, accessing the space, many vehicles needing to be parked, improving the apron, widening the curb cut, dimensions from house to curb, Meter 1:00]

The secretary then read into the record the comment from James Bailey, 62 Prospect Ave.

[Further discussion about no sidewalks, city right-of-way, what's a legal parking space, front yard requires 25', Meter 1:05:33]

Mr. McMahon then clarified his issue and his position is not whether she can create a parking space that complies. It's clear she can do that. His issue is granting her access to that space and not having it go straight to the sidewalk. He cannot grant that without a variance.

[Further discussion about legal spots, access to those spots, justification for giving a variance, not giving variances just to give them, postponing this appeal on the board's behalf, having the Building Inspector lay out what she can do without a variance, Meter 1:06 – 11:02].

Mr. Nolland advised the board if this can do this w/o giving a variance, they can't give a variance.

MOTION:

By Ms. Fisher, seconded by Mr. DeMane

THAT THE BOARD POSTPONE VARIANCE 2076 ON THE BOARD'S BEHALF FOR THE
NEXT 60 DAYS

ALL IN FAVOR: 4

4 MACDONOUGH STREET PROPOSAL:

[Meter 1:15]

Mr. McMahon advised Joshua Kretser has come to him with a proposal. It needs a use variance. He couldn't get himself on this month's agenda so he decided to come and give the board a review.

Mr. Kretser thanked the board for allowing him to speak and said the property they are looking at is 4 MacDonough Street, the old Johnson's Auto Glass Building. It's right across from the train station.

It's unique in that it was zoned commercial and was a pre-existing non-conforming use. He did see in previous minutes that has pre-existing non-conforming use to another owner and allow them to potentially use it as the same use, in this case would be commercial. He didn't know if this would be the case for this.

Mr. Kretser continued stating he would reside in the second floor and then rent out a potential business on the ground floor (i.e. liquor, grocery, restaurant).

Downstairs is approximately 2000 sf. It's been on the market for 2 years. The Johnson's still use it for storage.

Mr. McMahon then added the City Attorney would like a letter from the Zoning Board in regards to "tidying up that language" and what the board might suggest.

Mr. Kretser continued stating he might apply on the Johnson's behalf for a use variance. But a second potential issue will be parking. Currently he believes there is only 5 spaces. A potential restaurant might want this as outdoor dining. He mentioned the city parking lot a block away that could potentially be used.

The city parking lot near the Water Pollution Control Plant is not in the special assessment district.

The total building is about 3500 SF.

Mr. Nolland spoke about what this might become it will not have the parking.

[Meter 1:19 – 1:27:02: Discussion about any uses, variances, development of Durkee St. parking lot, adding MacDonough to special assessment district, variances for both parking and the use, parameters of continued use, discontinuance, abandonment, types of commercial uses, how to satisfy parking deficiency when no mechanism to be able to.]

Mr. McMahon then read from the zoning ordinance: “

“Except in R-1 and RH – if no external structure alterations are made a non-conforming use of a building or land may be changed from another nonconforming more closely conforming to the requirements.”

Mr. McMahon asked:

- Is the current non-conforming use still in effect.
- There is a table of less conforming to more conforming.

This parcel is R-2.

Mr. McMahon’s interpretation is as long as he was trying to sell it, not abandoned that use and used it for something else, that is based on past practice he would say it does conform.

Mr. Nolland advised as long as he can prove it’s a non-conforming use and still in good standing, he would be going to a more conforming use. Mr. McMahon said the uses he is discussing would be more conforming.

Mr. Kretser asked if the parking variance would be the only one required.

MOTION:

By Mr. DeMane, seconded by Ms. Insley

TO APPROVED THE MAY 16TH, 2016 ZONING BOARD MINUTES AS WRITTEN

ALL IN FAVOR: 3
(Mr. Nolland, Ms. Insley, Mr. DeMane)

Motion to Adjourn:

By Mr. DeMane, seconded by Ms. Insley

Adjourned at 8:36 PM

For the purpose of this meeting, this meeting was recorded on the VIQ System in the Community Room, City Hall. This is a true and accurate copy and transcription of the discussion.

Denise Nephew
Secretary
Zoning Board of Appeals

To the City of Plattsburgh Zoning Board:

Let me begin by saying that I have no objection to granting the variance for the 8 foot fence, nor am I here to criticize the zoning board. I am sure that none of you are aware of the intolerable situation in our neighborhood.

Approximately 10 years ago, my husband and I came before you requesting a variance, and I understand that the character, safety, and physical environment of the neighborhood is taken into consideration when granting that variance. I am also aware, after reading the Plattsburgh City Code, that noise in a residential/commercial district is also taken into consideration.

My grandfather bought my house in 1926, and I have lived at 11 Elizabeth St. for all but 10 years of my life. The Store Tavern has been a neighborhood bar for as long as I can remember. However, within the last 6 years, this business has radically changed. And though I received a notice for an 8 foot fence to be erected, a fence that no one in the neighborhood can see except the Store Tavern and the Frank family, I did not receive a notice informing me that an outdoor liquor license was granted to the Store Tavern. I did not receive a notice for an outdoor deck to be built on the back of the bar. I did not receive a notice that a horseshoe pit was being installed (hours, 8am-2am). I did not receive a notice that a lean-to for one end of the horseshoe pit was being built. I did not receive a notice that a permanent tent was being installed.

Perhaps all these changes do not require notification of residential neighbors. However, the problem lies not within these structures themselves—the problem is the noise pollution emanating from the structures. As stated in Chapter 206—Noise, in the City Code's Declaration of Policy:

“It is hereby declared to be the public policy of the City to control unnecessary noise in order to preserve, protect and promote public

health, safety and welfare and to foster the peace and quiet, convenience and comfort of its inhabitants. It is the public policy of the City that every person is entitled to life, health, and enjoyment of his or her property, free from disturbance caused by unnecessary noise. It is hereby declared that the making, creation and maintenance of excessive or unreasonable noises within the City is a menace to public health, comfort, convenience, safety, welfare, quality of life and the prosperity of the people of the city.”

This declaration is further illuminated in chapter 206, Sections 206.3, 206.4, and 206.5. As a resident and taxpayer of Plattsburgh, I have a right to peace in my home, and not a daily, loud, drunken, outdoor party in my back yard.

Again, I am not faulting the zoning board. But I am here to propose that in the future, in a residential/commercial district, there be notification of neighbors by the zoning board when a commercial establishment changes its liquor license or any other mode of operation, and that the city regularly inspects the commercial establishments for code violations, including noise.

Sincerely,
Mary Gertsch-Cochran
11 Elizabeth Street
Plattsburgh, NY 12901