

ZONING BOARD OF APPEALS

AUGUST 15, 2016 MEETING MINUTES

Present: Chairman Ron Nolland, Kathy Latinville (Alt.) Kellie Porter (Alt)
Joe McMahon, Building Inspector
Kyle Burdo, Housing Code Inspector

ABSENT: Kathleen Insley, Scott DeMane, Connie Fisher, April Kasper (Alt.),

Also Present:

Appeal #2071 Betty Jock
Appeal #2083 Thomas Morley
Carole Polhemus
Addoms Street neighborhood
Appeal #2084 Chad & Dana Welch
Appeal #2085 Ran Nizan, Bambi James

Mr. Nolland called the meeting to order at 7:06 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
2081	JOSHUA KRETSER 4 MACDONOUGH STREET	CLASS B VARIANCE REQUEST FOR LESS PARKING THAN REQUIRED
2083	THOMAS MORLEY 2 JEFFREY LANE	SPECIAL USE PERMIT ALLOW OWNERS TO PRODUCE COMMERCIAL GOODS IN RESIDENCE
2084	CHAD & DANA WELCH 57 GRACE AVENUE	CLASS B VARIANCE REQUEST TO ALLOW 6' PRIVACY FENCE AFTER HEDGE REMOVAL
2085	PLATTSBURGH SELF STORAGE 290 MARGARET STREET	SPECIAL USE PERMIT CONVERT OPEN SELF-STORAGE TO PARTITIONED SELF STORAGE

Mr. Nolland began this discussion stating Appeal 2081 asked to be postponed and then explained the process. They are a 5 member board, which means 5 regular and 2 alternate members. There were only 3 members present tonight. A quorum is 3 however for anything to pass, fail or take action requires 3 positive or negative votes. It is not designed to be a system in general where 3 people vote and anticipate getting positive votes for all 3. It is one where people have opinions and listen to various opinions. Eventually votes are cast. But applicants do have the right and should expect to be served by a full board. Due to vacations and people out of town this has led to only have 3 present tonight.

An applicant can request a postponement, waiting for a full board. [Further explanation, Meter 10:05] They do not or should not expect people to suffer because there happens not to be a full zoning board in attendance.

Mr. Nolland sincerely stated it was not a good idea in general to have your application heard with only 3 people.

Mr. Nolland then spoke about Special Use Permits requirements.

If an applicant decides part way through the process that it's not going great, the applicant can still request a postponement on the Board's behalf. However, the problem with this is this is a public hearing. This hearing is for comments, questions etc. about the application. If they start that process, they can stop it but they do have to go back through all the previous discussion and may have different board members. He reminded the audience there are 7 board members on the zoning board.

Mr. Nolland then spoke with the applicants.

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

Ms. Jock asked to be postponed waiting for a full board and get a hold of the building inspector and add more information about the property lines.

MOTION:

By Ms. Latinville, seconded by Ms. Porter

TO POSTPONE FOR 1 MONTH ON THE BOARD'S BEHALF

ALL IN FAVOR: 3

OPPOSED: 0

MOTION PASSED

The **second** item listed on the agenda was Appeal #2081, Joshua Kretser, 4 MacDonough Street for a Class B Variance request for less parking than required.

Mr. Kretser had also asked for a postponement.

MOTION:

By Ms. Porter, seconded by Ms. Latinville

TO POSTPONE APPEAL #2081

ALL IN FAVOR: 3

OPPOSED: 0

MOTION PASSED

For Appeal #2083, Thomas Morley, Mr. Nolland was not sure if this was a Special Use Permit. The board was not positive that's what he's applying for. [Meter 14:20]

For Appeal #2084, Chad & Dana Welch are looking for a 6' privacy fence. Mr. Nolland thought they wanted to discuss this more. [Meter 15:10]

For Appeal #2085, Mr. Nolland does think this is actually for a Special Use Permit. There are conditions the previous owners did not meet and need to be discussed.

Special Use Permits are a matter of right.

The **first** item heard was Appeal #2083, Thomas Morley, 2 Jeffrey Lane for a Special Use Permit to allow owners to produce commercial goods in residence.

[Meter 16:57]

Mr. Nolland questioned whether this was a Special Use Permit and what the BI office thinks about this.

Mr. Morley advised the Dept. of Agriculture said if they are going make beer for commercial sale in a residential zone it has to be re-zoned or have a SUP. Mr. Nolland advised communities differ. A Special Use Permit (SUP) is defined in the back of the zoning law, under allowed uses. He referenced the R-1 district chart. Only the items listed under those are an allowed use.

[Meter 18:45, Spoke about permitted uses in Schedule I shown, grandfathered in parcels, Accessory Uses and Special Uses, the process, if not listed, it's not allowed by a special permit, impacts.]

Mr. Nolland then advised he does not see this as a SUP. A state agency saying you need a SUP doesn't mean that's the proper avenue for your municipality. Mr. McMahon agreed. Is this a home occupation and how would we know that? Mr. McMahon said it could be and need more information.

Mr. Nolland added even if there were 5 people present, they would not vote on this SUP tonight because he doesn't believe the applicant qualifies for this. Mr. Morley thought this was the best avenue

Mr. Nolland then advised the audience there would be no public hearing on this tonight and no vote.

Mr. Morley advised they started a home brewery to make their own beer. They have had a lot of demand requesting "kegs" of beer. His intention is not to go into a commercial property. The intention is not to go into mass production. It's a special occasion type of thing. Someday maybe they can go to another location but at this point in time there is no intention to impact the neighborhood.

Ms. Polhemus advised they'd like to be able to sell it in different situations.

Mr. Nolland asked why they can't just make the beer. Mr. Morley advised they must go through the Dept. of Agriculture instead of Health Dept. (for food) and comply with all local ordinances. [Meter 24:45] There is no definition of something as small as what they are doing.

Mr. Morley advised they can do about 220 gallons in 1 batch (1/2 keg). They are currently doing 1 per month. The most they would process is 1 per week at this location, which is a very small volume. This is all sold word of mouth. New legislation will allow home brewing to be sold at Farmer's Markets.

Mr. Nolland asked why at this location instead of a garage. Mr. Morley advised the issue they have is they are looking for ~250 SF and to lease a commercial site that small doesn't exist. They do not have an interest in going bigger. This is modeled after another small facility in NYS.

Mr. Nolland advised they cannot vote on this tonight, since he believes it's not a SUP. Mr. Morley researched this and he couldn't find where this fits in. Mr. McMahon agreed that this does not fit the special use permit criteria.

M. Nolland recommended this application be postponed on the board's behalf. He asked Mr. Morley to meet with the Building Inspector and himself to talk about:

- a) fit or don't fit;
- b) home occupation.

The Building Inspector is going to have to understand his operation and define or not define what is needed here. You can't get a use variance for a non-conforming use.

Mr. Nolland thanked the public for coming. The public will be mailed another notice if/when this comes back.

Mr. Nolland again asked if it was the recommendation of the Building Inspector this was not a SUP. Mr. McMahon said yes and has a call into the City Attorney to verify this. The Board also did not think this was not a SUP.

Mr. Nolland then asked for a show of hands from the board that this is not a SUP. Mr. Morley then asked to wait to the next meeting and recommendation of the City Attorney.

MOTION:

By Ms. Porter, seconded by Ms. Latinville

TO POSTPONE ON BOARD'S BEHALF

ALL IN FAVOR: 3

OPPOSED: 0

MOTION PASSED

The **second** item heard was Appeal #2084, Chad & Dana Welch, 57 Grace Avenue for a Class B Variance to allow 6' privacy fence after hedge removal.

[Meter 35:30]

Mr. Welch stated they bought the house 4 years ago. The hedges have been trimmed every year. He "edges" the sidewalk. Those hedges are about 40 years old.

The hedge sticks out over the sidewalks on both streets.

The trunks of these hedges are a foot from the sidewalk. Mr. McMahon thought the property line is probably a foot or 2 inside the side walk. Mr. Nolland explained this is a 60' wide lot. If he puts a fence on the property line, 30' of that fence each way can only be 30" tall because it's on a corner. The rest of it can be 4' tall in the front yard. There is a pool on this property. The applicant could increase the fence height around the pool.

Mr. Nolland stated they could also put a new hedge up instead of a fence. Mr. Burdo added the plantings include that corner as well. Mr. Nolland advised there are other people with similar situations wanting to see what happens. Mr. McMahon said this hedge is pre-existing and predates the zoning ordinance. Anything you plant now must be maintained at that height.

Mr. Welch advised they would have never bought this property had they known they were going to lose this hedge. Ms. Welch added the City will gain 3-4 feet of visibility on corner of Grace & Holland. This is a safety and accessibility issue. The fence should help the property value and better visibility wise.

Mr. Nolland said sometimes the rules and common sense don't cross paths. This is a gorgeous hedge and only problem is it sticks over the sidewalk. Mr. Burdo advised the new hedge law is retro-active.

Mr. McMahon clarified the hedge law is dealing with a City problem. Mr. Welch is talking about private property. The applicant can trim the hedge back to the corner but would still exceed the 30" in the corner but in compliance because it's off the sidewalk. That 30" section is a pre-existing condition as far as the City is concerned. That hedge pre-dates our zoning ordinance. The hedge is 9' to the higher part.

Mr. Welch spoke about intersection of Cornelia & Prospect chain link fence. Mr. Nolland advised those people did come to the zoning board for approval for that fence.

Mr. Welch was told by City people that he could cut the hedges back and put the fence up to hold the hedges back. Mr. Nolland advised if the hedge is there, he still cannot put up a 6' fence at this location. He would still need a variance.

Mr. Nolland advised they were not voting tonight.

[Meter 46:29 – Discussion about safety concerns of his daughters, resale value of this property, 6’ high vinyl fence, 30’ area being slats or chain link, different scenarios, no accidents on this corner, cars parked around corners, ask Building Inspector where 6’ fences allowed in front and side yards, setting precedence, sidewalk going to curb.

Mr. Welch wants to comply with City ordinance. Mr. Nolland asked if they *can* make a law retroactive. Mr. McMahon said they can. If the neighbor’s tree over hangs your property, you are allowed to trim branches over hanging your property. This is same scenario. City will go in and cut those. The ADA has been on the City making sure sidewalks are pedestrian friendly.

Mr. Nolland advised they will postpone on the board’s behalf.

Ms. Welch said every situation is different. She thinks everything should be looked at (privacy, finances, etc.). Mr. Nolland then explained “zoning.” [Meter 54:03 – Discussion regarding unique properties, varying from the zoning laws, finding precedence’s.]

Ms. Porter asked if the applicant would consider moving the hedge back a little to give more clearance on that corner. Mr. Welch said they would. Mr. Nolland suggested diagonal also.

Mr. Welch advised he can trim the hedges back but they will look terrible. Mr. Nolland said he wanted to see where the “trunks” were in relation to the sidewalk. Mr. Welch said he would bring a picture. Ms. Porter said they would gain some land back after removing the hedge.

Mr. McMahon advised the City Engineer was concerned about the Right-Of-Way. Mr. Nolland then asked for the following:

1. Where is the property line in relation to the sidewalk?
2. Where are the trunks in relation to the property line?

MOTION:

By Ms. Porter, seconded by Ms. Latinville

TO POSTPONE ON BOARD’S BEHALF

ALL IN FAVOR: 3

OPPOSED: 0

MOTION PASSED

The **last** item heard was Appeal #2085, Plattsburgh Self Storage, 290 Margaret Street for a Special Use Permit to convert open self-storage to partitioned self-storage.

[Meter 1:02:10]

Mr. Ran Nizan is the owner of Easy Self Storage on Route 3. They just bought Lucinda Self Storage.

Mr. Nolland advised the previous owners had promised to complete certain items however those items did not get completed. One issue is the connector between the 2 buildings that the Zoning Board made them do. Ms. James explained the “connector” fell down and trapping a homeless women who was living in the storage area. It was wintertime and she was severely frost bitten and almost died. Mr. Nolland didn’t know what items were non-compliant. Ms. Bambi said they were working on the non-compliant items.

Mr. McMahon advised this was a Special Use Permit.

LONG FORM SEQR:

Page 2	c.	Add “ZBA.”
	d.	Add “BP.”
	C2.a.	Change to “Yes.”
Page 3	D1.c.	Change to “No.”

MOTION:

By Ms. Porter, seconded by Ms. Latinville

APPROVED THE SEQR FOR APPEAL #2085 AND FIND NO ADVERSE ENVIRONMENTAL IMPACT

ALL IN FAVOR: 3

OPPOSED: 0

MOTION PASSED

MOTION APPEAL #2085:

By Ms. Latinville, seconded by Ms. Porter

TO GRANT THE SPECIAL USE PERMIT

ALL IN FAVOR: 3

OPPOSED: 0

MOTION PASSED

AMENDMENT TO MOTION:

By Ms. Latinville, seconded by Ms. Porter

CONTINGENT ON PREVIOUS CONDITIONS BEING COMPLETED

ALL IN FAVOR: 3

OPPOSED: 0

MOTION PASSED

Motion to Adjourn:

By Ms. Latinville, seconded by Ms. Porter

Adjourned at 8:16 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