

APPROVAL OF MINUTES DATED March 23, 2023

Henry Hoisington - Addition

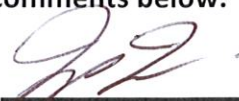
Due to minutes of above meeting being mailed to all members of the Zoning Board
I the undersigned do hereby approve said minutes as mailed, or disapprove with comments below.

Signed 

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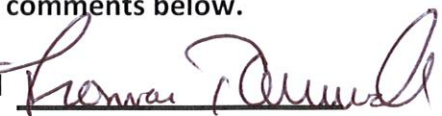
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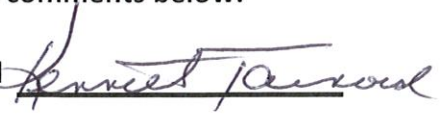
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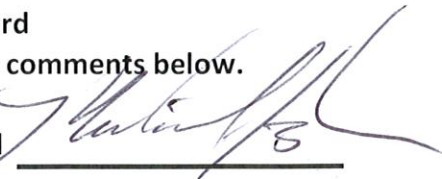
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**MEETING OF THE ZONING BOARD OF APPEALS
TOWN OF DUNKIRK MARCH 23, 2023
HENRY HOISINGTON – ADDITION TO POLE BARN**

The Town of Dunkirk Zoning Board of Appeals held a Zoning meeting at 6:00 p.m. on Thursday March 23, 2023 at the Town Hall, 4737 Willow Road, Town of Dunkirk with Scott Pagano presiding as Chairman.

PRESENT: Scott Pagano, Thomas Tarnowski, Michael Miller, Michael Bohn and Kenny Tarnowski.

ALSO, PRESENT: Supervisor Pagan, Councilwoman Penfold, Town Clerk, Rebeca Yacklon, Code Enforcement Officer, Ryan Mourer, Kyle Coughlin, Zoning Clerk, Lynn Dimmer, and Kenneth Demonte.

The Meeting was opened at 6:45 P.M. and started with the pledge to the flag.

Chairman Scott Pagano read the legal notice that was posted on March 15, 2023:

”NOTICE IS HERBY GIVEN that a public hearing before the Zoning Board of Appeals of the Town of Dunkirk will be held, March 23, 2023 at 6:00 p.m. at the Dunkirk Town Hall, 4737 Willow Road to consider the following applications:

1. In the matter of the application of Henry Hoisington III for property located at 10610 Temple Rd., Tax Map No. 95.02-1-24 for a use variance request to build an accessory building addition to existing building before a main building has been constructed. This is in violation of Article V AR-1 Section 29.
2. Upon approval of the use variance, an area variance was also requested. The variance request was for an additional 3,272 sq. ft. to the existing building. In violation of Article III AR-1 Section 17.
3. An additional area variance was requested for a setback. The request is a south side set back request of 15’3, a 10 ft. variance request. This is in violation of Article V AR-1 Section 32.

Any person may appear in person, agent or attorney. All interested persons shall be heard at said public hearing. If you have any questions regarding the above, please contact me at the Town Clerk’s Office at (716) 366-3967.”

An affidavit of this posting is available in the clerk’s office.

Chairman Pagano stated that a letter in correspondence to the project was received by the Clerk’s Office. The letter was from Chautauqua County Department of Planning. The letter stated:

“Dear Chairperson Pagano,

This letter is in response to your municipal zoning referral received in full by this office on March 15, 2023 regarding a use variance request to build an accessory building addition to an existing building before a main building is constructed and for an area variance request regarding setbacks. The requests are in regards to a property which is located at 10610 Temple Road, Tax Map Parcel 95.02-1-24. This parcel is located in the AR-1 Zoning District.

As one of the designated staff to the Chautauqua County Planning Board, I have reviewed the above noted referral. With regard to General Municipal Law 239-m this proposal is subject to the County since it is within 500 feet of a County Road.

I have reviewed the pertinent inter-community and county-wide considerations with respect to this proposal and its effect on the relevant concerns that are listed under General Municipal Law 239-1. Based on this review, I find that the proposed action would have no significant county-wide or inter-community impact and that the proposal would be a matter of local concern.

However, to assist the Town with its decision, I offer the following informal comments:

Use variances should be granted in strictly controlled , occasional circumstances when an unnecessary hardship is demonstrated. The formal criteria for grantin a use variance was set forth by the New York State Court of Appeals in *Otto V. Steinhilber*. New York State codified those criteria into Town Law 267-b, which states:

1. No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,
 - a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - b) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
 - c) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and,
 - d) That the alleged hardship has not been self-created TWN 267-b (2)(b).
2. If the board of appeals does grant a variance, they shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. TWN 267-b(2)(b)

Again, use variances should be used sparingly and only if all the above stated conditions are met and sufficiently demonstrated by the applicant. If the Town finds that the current zoning regulations are no longer relevant, then we would encourage the Town to examine this further and consider rezoning to ensure that allowed uses are compatible with its comprehensive plans and the community's welfare.”

PART 1

Chairman Pagano asked Mr. Hoisington what he would like to do.

Mr. Hoisington stated that he wanted an addition to his current building. He needs the addition to store vehicles.

Chairman Pagano asked for his lighting plans outside of the building.

Mr. Hoisington stated that he would like 4 LED lights on the corners of the building.

Chairman Pagano asked about landscaping plans.

Mr. Hoisington stated minimal landscaping plans. Just a plan for a French drain.

Member Kenny Tarnowski asked if he would be using stone or pouring cement.

Mr. Hoisington said due to cost stone to start and then eventually cement.

Member Tarnowski asked if he was running a business out of the building.

Mr. Hoisington stated that his building was not for a business, only personal use.

Member Miller asked what the current square footage of the building was.

CEO, Ryan Mourer stated that the current building is 1600 sq. ft. and for this addition Mr. Hoisington wants it to be in a U shape. So, there will be the existing 1600 sq. ft. building with a 10 ft wide hallway to attach the two buildings. He further explained that while this was an addition it is basically two buildings connected by a hallway. The second building will be 3200 sq. ft. meaning as a whole the building will be roughly 4800 sq. ft. The variance is for both size and a setback issue.

CEO, Ryan Mourer also stated that he wanted everyone to know, including the applicant, that he will not issue a permit until the property is in compliance. By that, he meant all the unregistered vehicles would need to be removed from the property. That was the CEO's main concern. He explained that this process is standard practice with all projects. There are many violations on the property in its current state. He asked the Zoning Board to consider that when making their decision.

Member Miller asked the CEO what constitutes an addition because he felt that the applicant was basically attaching the two buildings with a small tube.

CEO, Ryan Mourer stated that, that could be up for interpretation but he felt there was nothing within the code that would indicate that this wouldn't be considered an addition. Ryan explained that the applicant came up with this design on his own not even knowing that two buildings couldn't be on the property and that he would have to attach them. He also told the Board that it was advertised as a use variance but the use variance for the current building was granted many years ago when it was built. He stated that variances in front of the Board were for the size and setback.

Chairman Pagano asked if there would be any windows in the hallway connecting the two buildings.

Mr. Hoisington stated there would not.

Member Kenny Tarnowski asked if this would be a continuation of the pole barn already located on the property.

Mr. Hoisington stated that it would be. It will all match and look alike.

Chairman Pagano asked Mr. Hoisington is he would be okay with a stipulation stating that there will be no outdoor storage allowed.

Mr. Hoisington stated that would be okay. That was the purpose of the addition.

Member Tom Tarnowski added that there needed to be no unregistered vehicles.

CEO, Ryan Mourer stated that wasn't allowed per the Zoning Code anyways which is why he will not issue a permit for the project until that is remedied.

PART 2

With no further discussion from the Zoning Board, they began reviewing the are variance application.

1. Whether undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties. The Board agreed with the applicants answer of no because there are many large pole barns located within the AR-1 District.
2. Whether benefit sought by the applicant can be achieved by a feasible alternative. The Board agreed with the applicants answer of no because this would be the only way to attach the two buildings due to drainage issues within the area.
3. Whether the variance request was substantial. The Board stated that it was substantial but nothing that would affect any of the nearby properties.

- 4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood. The Board agreed with the applicants answer of no because there is not many buildings or homes near his property.
- 5. Whether the alleged difficulty was self-created. The Board stated that the issue was self-created by the applicants needs storage and they would prefer to see what is being stored outside of the current building replaced by a nice-looking addition.

It was determined by the ZBA based on the factors above that the benefit to the applicant does outweigh the detriment to the neighborhood or community. However, they felt stipulations needed to be made in order to grant the variance. Members agreed that the stipulations would be as follows:

- 1. No outdoor storage in any capacity.
- 2. The applicant cannot sell the property with a hardship or apply for a hardship use variance.
- 3. The applicant cannot have water without sewer/a septic system.
- 4. He cannot ever operate a business.

Chairperson Pagano made a motion to approve the area variance with the above stipulations. The motion was second by Member Tarnowski and carried.

A roll call vote was taken.

AYE:
 Member Miller
 Member Tarnowski
 Chairman Pagano
 Member Tarnowski
 Member Bohn

NAY:

ADJOURNMENT:

A motion was made by Chairperson Pagano to adjourn the meeting. The motion was seconded by Member Miller and carried. The meeting was adjourned at 7:09 p.m.

Respectfully submitted,

Kyle Coughlin
 Secretary to Zoning