

DRAFT

APPROVED

**TOWN OF THOMPSON
ZONING BOARD OF APPEALS
March 11, 2014**

IN ATTENDANCE: Chairperson James Carnell Richard McClernon
 Pamela Zaitchick Jose DeJesus, Alternate
 Eric Horton, Building Dept. Paula Elaine Kay, Attorney
 Scott Mace, Town Board Liaison Kathleen Brawley, Secretary

Absent: Richard Benson, Robert Hoose and Brian Soller (alternate)

Chairman James Carnell called the meeting to order at 7:00 p.m. with the pledge to the Flag.

Chairman Carnell named Jose DeJesus a full member in Richard Benson's absence.

Chairman Carnell asked for a motion to accept February 11, 2014 meeting minutes.
A motion to accept the minutes was made by Jose DeJesus, seconded by Pamela Zaitchick
4 in favor, 0 opposed

ABECASIS - 58 RUBIN ROAD (MOONLIGHT COTTAGES UNIT #29) - S/B/L: 43-1-23.3
William Sattler, P.E.

Chairman Carnell asked for a motion to re-open this Public Hearing and a motion was made by Richard McClernon, seconded by Jose DeJesus.
4 in favor, 0 opposed

Mr. Sattler provided secretary with proof of mailing. He further supplied the Board with a copy of the sketch plan for the subject premises which was approved by Homeowner's Association and signed/initialed by the members of the Board of the Homeowner's Association. Mr. Sattler provided an Owners Proxy of Israel Glazer. Mr. Glazer was listed on the application as the President of the Homeowner's Association as at that time, he was the President. The President is now Mr. Katz.

Chairman Carnell advised the Board that the Applicant is requesting an area variance for the purpose of 1) changing the foundation requirement from a full foundation to a slab on grade; 2) permitting a reduced bungalow separation from 25 feet to 14 feet; 3) permitting a second reduced bungalow separation from 25 feet to 21 feet; and 4) permitting a third reduced bungalow separation from 25 feet to 19.60 feet.

Mr. Sattler advised the Board that as a result of the Building Department asking him to provide all building separations, they realized they needed variances for the same and that is why the applicant made it part of this application.

Mr. Sattler advised that with respect to the porch addition; approximately two-thirds of the deck will be open as opposed to one-half as previously presented to the Board. The installation of a slab is important because the main building was constructed on slab on grade and the applicant does not want to have any issues if the slab is not permitted.

Chairman Carnell advised Mr. Sattler that in reviewing the Zoning Code, the Board notes that the improvements to the subject premises were made after the present Zoning Code was adopted. The Town adopted this part of the law to prohibit overcrowding in colonies such as this. What the applicant is asking to do is exactly what the Town is trying to avoid. Chairman Carnell provided the Board Members with a copy of the Code concerning overcrowding.

Mr. Sattler indicated that the applicant initially thought it was a 15 foot separation for decks but later found out it was 25 feet.

Attorney Paula Kay asked Mr. Sattler if he was missing any mailings as there is no proof of mailing for Baum and Jaclyn and John Elias. After review, Mr. Sattler was in fact missing proof of the mailing for Baum and Elias, but that he was sure he sent them and would sign an affidavit confirming the same. Attorney Paula Kay advised the Board that under the public hearing requirement, there is a substantial compliance with the mailing provisions, made by Applicant and we can move ahead or ask for an affidavit from the Applicant (Section 250-47 of the Town Code).

Chairman Carnell advised the applicant that the Board will open for public comment and there was no public comment.

The Board members had no comment.

There was no public comment.

- (1) Can the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance? All voted yes.
- (2) Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? 3 voted yes; 1 voted no.
- (3) Is the requested area variance substantial? 3 voted yes, 1 voted no.
- (4) Will the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? 3 voted yes, 1 voted no.
- (5) Is the alleged difficulty self-created? All voted yes.

Jose DeJesus indicated that his suggestion is to deny the extension of the deck and the concrete slab and approve the other variances (3 and 4 noted on the Public Notice) as they were there already and are required. Otherwise the applicant would have to take them all down.

Motion to deny 1 and 2: Jim, Rich all in favor

Chairman Carnell requested that a motion be made to deny the following variances:

- 1) changing the foundation requirement from a full foundation to a slab on grade; and
- 2) permitting a reduced bungalow separation from 25 feet to 14 feet.

A motion to deny the above-mentioned variance requests 1 and 2 was made by Jose DeJesus and seconded by Richard McClermon.

4 in favor; 0 opposed.

Chairman Carnell requested that a motion be made to approve the following variances:

- 3) permitting a second reduced bungalow separation from 25 feet to 21 feet; and
- 4) permitting a third reduced bungalow separation from 25 feet to 19.60 feet.

A motion to approve the above-mentioned variance requests 3 and 4 was made by Richard McClermon and seconded by Jose DeJesus.

4 in favor; 0 opposed.

GITTELMAN - 181 STARLIGHT ROAD - S/B/L: 57-2-13.1

William Sattler, P.E.

Chairman Carnell advised the Board that the Applicant is requesting an area variance for the purpose of 1) increasing a non-conforming structure; 2) granting a reduced front yard setback from 50 feet to 0 feet; 3) granting a reduced minimum lot size from 2 acres to 1.05 acres; 4) granting a reduced side yard setback from 20 feet to 3.50 feet; 5) granting another reduced side yard setback from 20 feet to 3.50 feet; 6) granting reduced combined side yard setbacks from 50 feet to 7 feet; 7) granting a reduced rear yard setback from 50 feet to 19 feet; 8) granting a reduced accessory building setback from all property lines from 10 feet to 8.50 feet; and 9) granting a reduced accessory building setback from the main building from 10 feet to 6 feet.

Mr. Sattler advised the Board that the \$100.00 fee was paid by the applicant. In fact, the Town was provided with three separate checks and they cashed the last one sent.

Mr. Sattler reminded the Board that the other concern mentioned in February's meeting was obtaining permission from Eagle Creek. A letter from Eagle Creek confirming that the license was granted together with a copy of the license was provided to the Board.

Mr. Sattler further advised that the deck on the neighbor's property line will be removed. It has been there for ten years and the owner of the property had no idea it was on his property.

Chairman Carnell wants to establish a specific amounts for the variances requested, as follows:

- 1) The front yard (lake side) setback will be 0 feet
- 2) The lot size will be 1.05 acres;
- 3) One side yard setback will be 3.50 feet;
- 4) Additional side yard setback will be 3.50 feet;
- 5) The reduced combined side yard setbacks will be 7 feet;
- 6) The rear yard setback will be 19 feet;
- 7) The accessory building setback from all property lines will be 8.50 feet; and
- 8) The accessory building setback from the main building will be 6 feet.

The Board members had no comment.

There was no public comment.

Attorney Paula Kay noted that one page was missing from the license agreement and asked Mr. Sattler to provide a full copy. However, Attorney Paula Kay indicated to the Board that the letter accompanying the license confirmed that it is approved by Eagle Creek.

Mr. Sattler advised the Board that all of this has been in existence for over ten years. It was not discovered that a building permit was not issued although it is his understanding that the homeowner did make the efforts to get a permit ten years ago and in fact thought he had a permit. The homeowner did not intend to build without a permit.

- (1) Can the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance? All voted no.
- (2) Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? All voted no.
- (3) Is the requested area variance substantial? 3 voted no, 1 voted yes.
- (4) Will the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All voted no.
- (5) Is the alleged difficulty self-created? All voted yes.

Chairman Carnell requested that a negative declaration motion be made. A motion was made by Pamela Zaitchick and seconded by Jose DeJesus
4 in favor; 0 opposed.

Chairman Carnell requested that a motion to approve all nine variances be made. A motion was made by Jose DeJesus and seconded by Richard McClernon.
4 in favor; 0 opposed.

BESSER - 58 CRESCENT CIRCLE - S/B/L: 54-3-26

Mr. Joseph Henle, agent of applicant

Chairman Carnell and Jose DeJesus recused themselves from reviewing this application. Chairman Carnell named Pamela Zaitchick as Acting Chairman.

Acting Chairman Pamela Zaitchick advised Mr. Henle that the Board cannot act tonight as we do not have a quorum.

Mr. Henle asked if the Board received the letter from the applicants and the Board confirmed that they did. Mr. Henle further noted that Mr. and Mrs. Leitman, the neighbors who were in opposition to this application at the last meeting, were present at tonight's meeting.

Mr. Henle advised that the applicants did not get an engineer as they were not sure if they needed an engineer or a handyman. Mr. Henle advised that the applicants were trying to work with the neighbors as well. Mr. Henley presented photographs of the subject premises to the Board. Mr. Henle noted that the issue with the neighbors, Mr. and Mrs. Leitman, was that they indicated the applicants' deck was causing an obstruction to their view. Mr. Henle advised the Board that an aerial view of the subject premises reflects that the Leitman's deck is higher up than the deck in question and that there are trees in the way of their view as well. Mr. Henle advised the Board that his point is that the accusation of Mr. and Mrs. Leitman is not valid in that the deck is an obstruction. Even without the deck, the existing house comes out 20 feet and therefore, removing the deck would not relieve the obstruction.

Mr. Henle wants to know what the Board wants to do to resolve the issues.

Richard McClernon advised Mr. Henle that the applicant should take care of the Building Department issues. Eric Horton confirmed that he will make a list of outstanding issues for the applicant.

Attorney Paula Kay advised Mr. Henle that he may have to send notice of this application once again to all interested neighbors. She also advised that the May meeting of the Board may be more feasible and Mr. Henle agreed.

THOMPSON STATION, INC.

John Cappello, Esq. and Steven J. Alex, PLS from The Chazen Companies.

Chairman Carnell advised the Board that the Applicant is requesting an area variance for the purpose of 1) granting a reduced side yard setback for Staples building from 35 feet to 3.7 feet; 2) granting a reduced side yard setback for existing bank building from 35 feet to 18.6 feet; 3) granting a reduced side yard setback for existing theater building from 35 feet to 28.5 feet; 4) granting reduced combined side yard setbacks from 70 feet to 32.2 feet; and 5) permitting the applicant to have 410

parking spaces on proposed lot 1 and 920 parking spaces on proposed Lot 2 and any other bulk area variances which may be required to permit the requested subdivision.

Mr. Cappello provided secretary with proof of mailing.

Mr. Cappello advised the Board that at the time the shopping center was development and the lease given to The Home Depot, the Applicants were given the option to purchase its lot from the shopping center and become a separate lot. That is what the Applicants are proposing to do today. The Applicants are selling the lot to The Home Depot. For all intents and purposes, anyone visiting the shopping center will not see any changes; it is ownership and identity only. There will be no physical changes and the Applicants are literally just drawing a line on the map. The Applicants will present to the Planning Board a reciprocal easement for ingress and egress for parking, as well as reciprocal easements for snow removal, drainage, sewer, water, etc. At the time the shopping center was initially was improved, the Applicants were in compliance with Town Code. With this change to the plan, the Applicants cannot meet all of the requirements to subdivide and that is why they are here.

Mr. Alex advised the Board that as a result of the proposed subdivision, there are three variances required for various buildings onsite that are new; and one variance for a building that is pre-existing, as follows:

- 1) Side yard closest to Staples; the Applicants are requesting in a 3.7 foot setback.
- 2) Side yard for Bank in front; the Applicants are requesting in a 18.6 foot setback.
- 3) Overall Site; the Applicants are requesting a 32.2 foot setback. (Staples and the theater are closest to the lot lines.)
- 4) The pre-existing variance is for the theater. The Applicants are requesting a 28.5 foot side yard setback. The theater was built prior to zoning code and is pre-existing non-conforming. If the Board does not want to do anything on this variance, the Applicants will continue to operate as they have in the past.

Mr. Alex further advised that there is no way to avoid the non-conformance. None of the variances we are asking for create any undesirable change; there will be no physical changes to the Plaza and will continue to operate as it always did. We do not believe the variances are substantial; it will continue to function as one parcel and one project. It is self created, but to accomplish this subdivision, it is unavoidable. Hopefully, it being self created has no bearing on the requested variances.

Attorney Paula Kay advised Mr. Cappello that with respect to the proposed parking variances, the applicants should to go forward and this Board will review the same.

Mr. Alex advised that parking for Shop Rite, Home Depot and Auto Zone was approved under the current code and were constructed in accordance with current zoning. We have 410 parking spots on the Home Depot lot and 920 parking spots on the remaining lot and we would like to get a

variance for those. Attorney Paula Kay asked what the requirements are. Mr. Cappello advised that if we went under the current code, we would probably require some variances. There are reciprocal easements. Chairman Carnell noted that in January 1999 an additional 250 parking spaces were required, but a variance was requested by the applicant and received.

Mr. Alex advised that the applicants are not sure what the total required amount of parking spots would be.

Pamela Zaitchick asked the applicants if they are asking for a variance for the theater because you want to put it into compliance? Mr. Cappello advised that the applicants probably do not need to get a variance, but because we are cutting off a portion of the lot, they want to make sure they are all in compliance.

Attorney Paula Kay advised the applicants that the County's 239 review was not yet received. Mr. Cappello advised that the applicants have no problem waiting for the County to give their review, but they would like authorization to go forward contingent upon that.

Jose DeJesus asked the applicants to confirm that there are reciprocal easements for parking, utilities, etc. and Mr. Cappello confirmed the same.

There was no public comment.

With respect to the application for area variances:

- (1) Can the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance? All voted no.
- (2) Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? All voted no
- (3) Is the requested area variance substantial? All voted yes.
- (4) Will the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All voted no.
- (5) Is the alleged difficulty self-created? All voted yes.

Chairman Carnell requested that a motion be made to approve the first three variances as requested;

- 1) granting a reduced side yard setback for Staples building from 35 feet to 3.7 feet;
- 2) granting a reduced side yard setback for existing bank building from 35 feet to 18.6 feet;
- 3) granting a reduced side yard setback for existing theater building from 35 feet to 28.5 feet;

A motion to approve the first three variances was made by Jose DeJesus and seconded by Richard McClernon.

4 in favor; 0 opposed.

Chairman Carnell requested that a motion be made to approve the overall variance for proposed Lot 2 granting reduced combined side yard setbacks from 70 feet to 32.2 feet, conditioned upon receiving the County's 239 Review.

A motion to approve the overall variance for proposed Lot 2 was made by Pamela Zaitchick and seconded by Richard McClermon.
4 in favor; 0 opposed.

A motion to end the meeting at 7:50 p.m. was made by Richard McClermon and seconded by Pamela Zaitchick.
4 in favor; 0 opposed.

Respectfully submitted,

Kathleen Brawley, Secretary