

**TOWN OF THOMPSON
ZONING BOARD OF APPEALS
Tuesday, May 12, 2015**

APPROVED

IN ATTENDANCE: Chairperson James Carnell Richard McClernon
 Robert Hoose Pamela Zaitchick
 Jose DeJesus, Alternate Kathleen Brawley, Secretary
 Paula Elaine Kay, Attorney Eric Horton, Building Dept.

ABSENT: Richard Benson and Brian Soller, Alternate

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

MAYER GELBART and MAYA GELBART
368 Fraser Road, Monticello, NY 12701; Section 10 Block 8 Lot 8.2
Tim Gottlieb, P.E.

Chairman Carnell read the public notice.

Mailings were submitted to the secretary.

Chairman Carnell advised that the Board reviewed the applicant's prior application which was not approved and note that the applicants have come back and made addition in line with the existing houses which is acceptable to the Board.

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 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 No.
- (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.

A motion to approve the variances requested from §250-7 of the Town of Thompson Zoning Code for the purpose of: 1) reducing one side yard setback from the required 15 feet to 6.5 feet; and 2) reducing the combined side yard setbacks from the required 40 feet to 21.2 feet was made by Pamela Zaitchick and seconded by Richard McClernon.

4 in favor; 0 opposed.

DAVID TEPPER and HAYA TEPPER

415 Sackett Lake Road, Monticello, NY 12701. Section 44 Block 2 Lot 4
Maria Zeno, Esq. and James DeWinter, P.E.

Chairman Carnell read the public notice.

Mailings were submitted to the secretary.

Chairman Carnell noted that after the Board's review of the application, it appears that the existing sewer line is making it difficult to build on the lot. Mr. DeWinter advised that the applicants do not want to be on top of the lake and they moved the house back on the lot. Chairman Carnell further noted that the Board is concerned about crowding the neighbors, as the wraparound deck is close to the property line. Mr. DeWinter said that they planned on two different options including an alternative to the wraparound deck. They can leave the front portion of the deck, but we can square it from the building. Mrs. Zeno advised that if the applicants build it that way, the variance would only be 8.9 feet, not 15 feet as requested.

Chairman Carnell discussed the dimensions on the house and the setbacks with the Board and applicants' representatives.

Robert Hoose asked about the age of the existing house, but it was unknown. Mr. DeWinter noted that it was a seasonal residence and will be completely removed. The new residence will be a year round residence. Chairman Carnell noted that one of the conditions to obtaining approvals tonight will be the removal of the old dwelling.

PUBLIC COMMENT:

Tom Mulvey a next-door neighbor to the premises, asked how far the home will be built from shore line and how close it will be to his home. Mr. Mulvey also wanted to know if there was any way the walkway can be relocated to the other side of the house. Mrs. Zeno advised that the applicants are amending their application to remove the wraparound deck and will keep the back deck only. Chairman Carnell noted that there will be a landing with a staircase facing Mr. Mulvey's home.

Mr. DeWinter advised that the landing is presently 4'x5' but if the limit is 4'x4', we'll do 4x4. The landing cannot be moved, as it is a modular home. Richard McClernon felt that traffic between the two houses seems to be an issue and constructing walkways to the lake where there are no dwellings would be better. Chairman Carnell noted that the exit on the north side of the house is the secondary entrance, which Mrs. Zeno confirmed. Mrs. Zeno advised that the main entrance is from the driveway. Chairman Carnell asked if the rear deck has steps as well and Mrs. Zeno confirmed it did. Chairman Carnell asked if the basement was a walk out and Eric Horton advised that there is a six foot sliding door out of basement. Chairman Carnell stated that from what he understands, this is a cape style one story modular home. Mrs. Zeno provided a rendering of the home to the Board.

Chairman Carnell asked if the existing vegetation will stay and Mr. DeWinter confirmed that the existing hedgerow would stay.

Donna Mulvey, a neighbor, advised that the hedge that they were referring to is hemlock trees which her family have kept them trimmed to make a hedge. You cannot see through them and it is a nice buffer. Our concern is that the applicants will remove them. We want something between our house and theirs and preferably not a fence. Mrs. Mulvey also noted that when they installed her mother in laws house (the house next door) they flipped the layout of the home to help with access. Mrs. Mulvey felt that a wraparound porch would be more feasible if the applicants flipped the house and that trees could be cut to accommodate that. If the house stays in the location as proposed, the main entrance is very close to her mother in law's bedroom, which gives her very little privacy. Mr. DeWinter noted that Dr. Tepper is a doctor in Florida and will be an excellent neighbor. Mrs. Mulvey discussed the floor plan with Mr. DeWinter. Mrs. Mulvey questioned where the lot ends and where the building is located. Mrs. Mulvey was concerned about the location of the house in relation to her mother in laws porch and Mr. DeWinter noted that the Mulveys have ten feet beyond the applicants' deck and that they would not see them sitting on their porch.

Mr. DeWinter advised that the applicants will either flip the layout of the home or change the side entrance. Mrs. Mulvey noted that since there is no neighbor, they could possibly keep their porch if the flipped the home. Chairman Carnell advised that it seems like the side entrance is not a major entrance and could be removed and was only there because of the deck which is not being built now. Mrs. Zeno advised that the applicants will remove the landing which is near the neighbor's bedroom and they will keep the landing in the front as well as the entrance on the back.

Mickey Mulvey, also a neighbor, noted that the proposed dormers face north and they would be better if they had southern exposure. Also, if the applicants flip the house, they can have the porch they want. The neighbor is amenable to removing the garage and trees to help with relocating the new home. Mr. Mulvey assured the Board and the applicants that his family is in favor of this application, with certain concessions. They want the hedgerow to stay. The deck as revised is acceptable. They want the building flipped to ensure privacy.

After discussion, it was determined that this application needs to be sent to the County Planning Department for 239 review. The application will be held open as long as it remains substantially the same.

A motion to keep the hearing open until the June 9, 2015 meeting was made by Richard McClernon and seconded by Robert Hoose.

4 in favor; 0 opposed.

JAIME DAZA and MARTHA DAZA

89 Rapp Road, Monticello, NY 12701. Section 7 Block 1 Lot 32.2

Douglas Muller and Martha Daza

Chairman Carnell read the public notice.

Mailings were submitted to the secretary.

Chairman Carnell noted that during the work session, the Board was trying to figure out what buildings are being demolished. Mr. Muller showed the Board the buildings on the plan. There are three dwellings, but they will be removed and a new building will be built.

Eric Horton advised that prior to the issuance of a Certificate of Occupancy, all other buildings must be removed.

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 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 No.
- (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.

A motion to approve the variances from §250-8 of the Town of Thompson Zoning Code for the purpose of permitting two single family residences on one lot, subject to the removal of all other buildings prior to the Certificate of Occupancy being issued on the new residence, was made by Robert Hoose and seconded by Richard McClernon.
4 in favor; 0 opposed.

IAN SAX

117 Beaver Lake Road, Rock Hill, NY 12775 - Section 34 Block 3 Lot 10

Ian Sax and Jerry Felice

Chairman Carnell read the public notice.

Mailings were submitted to the secretary.

Chairman Carnell noted that there appears to be an existing dwelling which the applicants are looking to demolish and replace with new structure. Mr. Sax advised that it is essentially the same footprint. Chairman Carnell asked for plans for the deck and Mr. Felice noted it will be about 2 feet from the ground. Chairman Carnell asked if a new septic system was to be installed and Mr. Felice

confirmed it was.

Pamela Zaitchick asked if the property was subject to a homeowner's association and Mr. Sax said it was not, and it was only a volunteer organization.

Chairman Carnell asked if the blue dotted lines on the map was the waterline and after review Eric Horton felt they were low water marks. Chairman Carnell asked if the shore line goes over the property line and Mr. Felice advised it goes right to the property line.

Attorney Paula Asked about the encroaching shed noted on the plan and Mr. Sax advised he owns the property next door and that the shed is his. Mr. Sax advised that they own both lots, but they can move the shed. Attorney Paula Kay advised that even though they own both lots, you can't keep the shed on a separate lot unless you combine them. Eric Horton asked about the size of the shed and Mr. Sax advised it is 8'x8'. Mr. Horton questioned the setbacks and proposed moving the shed. Mr. Sax advised that the shed is on gravel and 4'x4' planks, so it is easily moveable. Chairman Carnell advised that the Board will make their approval conditioned upon the shed being moved.

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 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 No.
- (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.

A motion to approve the variances from §250-9(19)(A)(2) of the Town of Thompson Zoning Code for the purpose of: 1) reducing the front yard setback from the required 50 feet to 13.35 feet; and 2) reducing one side yard setback from the required 20 feet to 15.68 feet; 3) reducing the combined side yard setbacks from the required 50 feet to 46.47 feet; and 4) permitting a reduced minimum lot size from 40,000 square feet to 10,617 square feet, conditioned upon the shed on the east side of the subject premises being relocated 10 feet off of either property line was made by Richard McClernon and seconded by Robert Hoose
4 in favor; 0 opposed.

NATALIE A. QUINN

Starlight Drive, Monticello, NY 12701. Section 57 Block 4 Lot 5.1

James Dudek

Chairman Carnell read the public notice.

Mailings were submitted to the secretary.

Chairman Carnell asked if the Building Department had an application for a building permit and Eric Horton advised he had no plans and no construction details.

Mr. Dudek advised that he is proposing to build a 20'x20' cabin with a wraparound deck. He did not want to waste time putting together drawings if he will not be allowed to build it. He believes he is going to put the building on pilings and Eric Horton advised they will be frost protected piers. Mr. Dudek advised that he was not sure of acreage, but believes all setback requirements will be met. He does not want to build anything larger due to property taxes and just wants a smaller burden.

Chairman Carnell reviewed the Town Code to see if hunting fishing cabins are permitted in the zone. He noted that cabins are permitted for the size, but the zoning code says they have to be constructed on lots 10 acres or more. Attorney Paula Kay advised that the applicant would need to apply for a different variance or amend the application.

Mr. Dudek noted it would be a seasonal residence. Eric Horton advised Mr. Dudek that seasonal dwellings are not permitted in the code. They must be insulated with heat, etc. There are exceptions for owner-occupied single family dwellings and Mr. Dudek could use a wood burning stove and does not have to have a furnace or boiler. Chairman Carnell noted that any heating system has to meet the energy code.

Chairman Carnell felt that the hunting and fishing cabin may be a better route instead of reducing the required size of the dwelling. Mr. Dudek asked if the other dwellings currently in the Town which are 600 square feet were constructed prior to the present zoning law and Chairman Carnell confirmed that is the case. Chairman Carnell also noted that a reduced size dwelling approval, requires a larger lot. The Board felt it was better to ask for a reduced lot size instead of a smaller dwelling.

The Board discussed square footage requirements of one family residences.

Mr. Dudek asked if a hunting fishing cabin had a maximum square footage of 400 square feet and Chairman Carnell confirmed it was. Mr. Dudek then stated that he did not want to ask for a hunting/fishing cabin.

Chairman Carnell asked about the trailer across the street and Mr. Dudek stated that the placement of that trailer is on before the Planning Board tomorrow night. Mr. Dudek advised that he mistakenly put it on that lot and that his plan is to put the camper on the left lot. Mr. Dudek advised that he planned on using the camper while he was building the cabin, which he acknowledged is illegal. Mr.

Dudek advised that he is going to try not to move too many trees, rocks, etc. Mr. Dudek further advised that he knows he has to install a driveway along with other provisions. Mr. Dudek also advised that he has a temporary garage up which will not last and it is just to keep things inside of it while he is building. Attorney Paula Kay asked if you can see it from the road. Mr. Dudek said in the winter yes, but now, no. Attorney Paula Kay asked if the trailer is visible from the road or from your neighbor's homes? Mr. Dudek explained the location of the neighbors, and said no, you cannot see it. Pamela Zaitchick asked if Mr. Dudek was keeping the trailer after the cabin was built and Mr. Dudek said he did not think so, but he did not want to commit to that. Attorney Paula Kay asked about the septic from the camper and Mr. Dudek advised that he has a portable toilet which he brings home to New Jersey to empty. Eric Horton advised that this is an issue because typically, we have on-site waste disposal. Chairman Carnell asked if septic is running on the property and Mr. Horton advised that he did not see or smell anything from the road but he cannot comment on it. Mr. Dudek advised that he will remove the trailer from where it is illegally parked and place it where it will be legally parked.

Chairman Carnell asked if the property was divided into two lots by the road being installed? Mr. Dudek said his deed provides that the lots cannot be sold separately. Leo Glass, a neighbor, explained that the lots are assessed separately because they are on separate sides of the right of way. Chairman Carnell explained the process of splitting lots when a road is constructed.

Mr. Dudek commented that he wants to be as secluded as possible and he will disturb the lot as little as possible.

Public Comment: Leo Glass, a neighbor of the premises in question, noted that this applicant has been squatting on the property for several months. We don't know what he's doing for water and sewer. He's parking his cars on Mr. Glass' property. (Mr. Dudek acknowledged that and apologizes for the same.) Mr. Glass advised the he did not think this is a neighborhood for a building as small as a two car garage and if the applicant wants to hide, he should buy 20-30 acres somewhere else. Mr. Glass advised that he opposes the application vehemently.

Chairman Carnell asked Mr. Dudek if Ms. Quinn purchased the property in January 2015 and Mr. Dudek confirmed she did.

Pamela Zaitchick asked Mr. Glass if the building is secluded and not easily seen from the road would it be acceptable to him and Mr. Glass advised that the only reason the lot is secluded is because the area has not been developed yet. The lot has access to Swinging Bridge reservoir. The area will ultimately be developed with more upscale residences, far better than what is being proposed by the applicant.

Attorney Paula Kay asked if the Board wants to ask the Town Attorney or Eric Horton to see if there is any precedent on a building less than 1000 square feet in the Town. Eric Horton advised that a prior applicant, D'Agostino, was permitted to do so as a second home, but the acreage on the lot was significantly greater. Chairman Carnell advised that he wants to see setbacks and where the well and septic are located so neighbors can see where it is going to built.

Chairman Carnell asked to review the applicant's Planning Board application and noted that the location of the proposed building was not shown on the map provided by the applicant.

Joe DeJesus noted that he thinks we should have the Town Attorney do some research concerning precedent.

Chairman Carnell advised the applicant that the Board does not usually act without being provided with setbacks, etc. Mr. Dudek advised that he did submit it and he is not sure what happened. Eric Horton advised that he saw what Mr. Dudek is speaking of as well. Attorney Paula Kay advised that unless the Board has it to review, they really cannot act.

Chairman Carnell advised that the Board really cannot move forward without the details requested but we can hold the hearing open. Attorney Paula Kay advised Mr. Dudek that the Board asks that this be done all at once to help you determine where everything is going to be and whether or not you need any other variances. This is a pretty unusual circumstance and may be setting some precedent.

Mr. Dudek advised that he will come back with a map showing where the proposed cabin, well and septic are located.

Robert Hoose advised that th Board wants a plan so we can show people what you are building and that all other applicants do this. Mr. Dudek asked if he should have the surveyor draw the location of the building with the setbacks on the map. Eric Horton reminded Mr. Dudek that decks over one foot off of the ground are included in the setbacks and patios and staircases are exempt from setback calculations. Mr. Horton further reminded Mr. Dudek that if he wants to keep the temporary garage, he needs to include that in his plans as well.

A motion to keep the hearing open until the June 9, 2015 meeting was made by Richard McClernon and seconded by Pamela Zaitchick.
4 in favor; 0 opposed.

Attorney Paula Kay reminded Mr. Dudek that if he may need to re-notice and ask for additional variances once he prepares his plan. Eric Horton advised Mr. Dudek to place the building on the plan where he can meet the setback requirements.

JACK SIMONY

Moonlight Cottages Unit 12, 58 Rubin Road, Monticello, NY

Section 43 Block 1 Lot 23.3

Al Adler, P.E., Adler Engineering, Michael Kozykowski and Jack Simony

Chairman Carnell read the public notice.

Mailings were submitted to the secretary.

Michael Kozykowski showed the Board a larger plan and provided correspondence from Mr. Adler's

office to confirm that the open building permit issue was resolved and there are no visible deficiencies. The permit will be closed.

Chairman Carnell asked if the actual classification of the premises is a bungalow colony. Attorney Paula Kay advised it was and after reviewing the Code, advised that bungalow colonies are permitted in the zone and there is no issue with the square footage, just the building separation.

Chairman Carnell advised the Board that the only variance they are dealing with is the building separation issue. Richard McClernon noted that he is not comfortable with expanding the building. Pamela Zaitchick noted that if we approve this variance, the applicants can triple the size of the building. Chairman Carnell asked why one section of the building is skewed on the plan and Mr. Simony advised he was not sure, but he was happy to square it out. There may be a pathway near the skewed area. Pamela Zaitchick asked about two separate notations on the plan and Mr. Kozykowski advised that they are two additions to the building. Mr. McClernon advised that the applicants have been using the prior addition without a Certificate of Occupancy and the applicants had a building permit but no Certificate of Occupancy. Mr. Simony advised that he bought it with the open permit and had no idea. The Seller assured him that it was going to be taken care of. Attorney Paula Kay advised Mr. Simony that if a municipal search was done when he purchased the property, he would have known about this issue. Mr. Simony apologized for any oversight.

Attorney Paula Kay advised that Board that the applicant's request is very minor from what has been asked by prior applicants in the colony.

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 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? 2 voted No (Carnell and Hoose) 2 voted Yes (Zaitchick and McClernon).
- (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.

A motion to approve the variances requested from §250-34(d)(6) of the Town of Thompson Zoning Code for the purpose of permitting a reduced separation distance between units from 25 feet to 19.5 feet was made by Richard McClernon and seconded by James Carnell. 4 in favor; 1 opposed (Zaitchick).

Robert Hoose asked when requests like this are going to stop. Chairman Carnell noted that the applicants have 91 acres. Mr. Simony advised that they are just working with where the buildings are located on the site and that they enjoy being there.

Mr. Adler advised that in addition to this Board, the applicant has to go through their own

Homeowner's Association. Mr. Simony advised that he has dealt with them for years on his unit.

Chairman Carnell advised that the district regulations of what is required (lot coverage, setbacks, etc.) and what they have is all well above the minimum specifications. Richard McClernon noted that the amount of buildings in an acre is being increased and that the more they build, the more water is being used, etc. Jose DeJesus advised that he has stated how he feels it numerous times on separation distance, however, he agrees with the Chairman. We are here to base our decision on the law.

The Board then had a lengthy discussion regarding separation distances. Attorney Paula Kay suggested we ask the local fire departments to give us a recommendation, but some departments may not like doing that. The fire departments do not have set rules on this. We may want to approach them in any event. Jose DeJesus stated that as a Board, we have to say that this cannot continue. Maybe we can come together as a Board and make sure that we stop allowing this. Attorney Paula Kay advised that if you as a Board wants to take a stand, you have to go through the criteria as to why they have a hardship and why it is unique. If you are going to deny it, you have to explain why. Then you are covered. Chairman Carnell noted that the distance requested tonight is not great. It is a one story building.

A motion to close the meeting at 8:30 p.m. was made by Robert Hoose and seconded by Pamela Zaitchick.

4 in favor; 0 opposed.

Respectfully submitted,


Kathleen Brawley, Secretary
Town of Thompson Zoning Board of Appeals