

**TOWN OF MAMAKATING
ZONING BOARD OF APPEALS MEETING
JULY 28, 2016**

Present: Mathew Mordas-Chairman; **Board Members:** Cathy Dawkins-Present; Georgia Rampe-Present; Beverly Martin-Present; Kent Findley-Present- **Zoning Board Attorney:** John Cappello who will be replacing Steve Mogel this evening.

Meeting called to order at 7:00 p.m.

Michael Cerbo Public Hearing – Tax Map Section 72; Block 1; Lot 2.6 – Motion made by G. Rampe to open the public hearing; second by B. Martin. All in favor. Applicant was not present yet. Chairman Mordas stated that this applicant will be placed at the end of the agenda.

Robert & Tracy Scheuering Public Hearing-Tax Map Section 7; Block 1; Lot 58.3

Present: Mr. Scheuering

Motion made by K. Findley to open the public hearing; second by B. Martin. All in favor. Chairman Mordas asked the applicant to come forward and explain his situation.

Mr. Scheuering stated he is looking for a variance for a 12x16 shed on his property and it turns out that there is a question as to whether the shed is beyond the front of his house. The circumstances are that the road curves and the corner of the house and the corner of the shed is so close in distance there was some question by the Board as to whether a variance was the way to go, however, regardless he thinks that it is and he is presenting the mailings. Chairman Mordas asked the secretary if the mailings were done and the public notice was posted in a timely manner. Response was in the affirmative-public notice was published in the Times Herald Record on July 19th with verification received.

K. Findley asked if he actually measured the distance; Mr. Scheuering responded yes and the distance he came up with was approximately 114 ft. from the front corner of the shed to the center of the road and about 130 ft. from the corner of the house to the center of the road. Chairman Mordas asked Mr. Scheuering to explain that this has been previously approved by the town who stated the original plans for the house which was built in 2005 and he purchased it in 2007 the shed was pre-existing when he bought it and come to find out through some research and when the subdivision map was turned over to him from Mr. Morin the previous owner, the shed is shown on the map and these plans were approved and was on file and he has been paying taxes on the shed since he has owned it. The Chairman stated he spoke with Mrs. Reynolds in the Building Department and the then Building Inspector, Mr. D. Brown did approve it to be there.

C. Dawkins asked to we right a resolution or just approve a variance.

Chairman Mordas asked if there was anyone from the public who would like to speak. Mr. Lesser asked if any of the Board members had been out there to look at the situation. Chairman Mordas responded that he had been out there and measured it and received a rough measurement. Mr. Lesser stated he has no objection.

Chairman Mordas stated the lady from the Shawanga Journal asked after the last meeting if we could override the decision of the Building Inspector and he would have to say it would have to be quite an outrageous mistake so we could just issue a variance since none of the neighbors are complaining.

Motion made C. Dawkins to close the public hearing; second by B. Martin. All in favor.

Chairman Mordas requested a motion to issue a variance of 199-13 C-2 to grant Mr. Scheuering some relief in regards to having an accessory structure closer to the street than his primary structure.

C. Dawkins stated she would like to motion to reflect that the decision is necessary because of the criteria that the homeowner bought with the current certificate of occupancy and building certificate C.O. you are correcting an oversight and that the benefit to the applicant and there's no detriment to the area; this is a Type II action under SEQR and because it's an area variance for a single family residence with a shed that is closer to the road than the primary residence.

Motion made by G. Rampe to grant the variance; second by C. Dawkins. All in favor.

Mr. Scheuering asked considering the Town recognizes that the records are lost forcing him to seek a variance, is there any way that he could seek some sort of restitution and the fees incurred acquiring the variance. Counselor Cappello quoted case law disallowing this request or any legal rights.

**Matthew Bremer Public Hearing – Tax Map Section 8; Block 1; Lot 9 and Section 8;
Block 3; Lot 1**

Present: Matthew Bremer

Motion made by K. Findley to open the public hearing; second by B. Martin. All in favor.

Mr. Bremer presented copies of additional information to the Board as well as a power point presentation of his proposed project. He is hoping to purchase the church and convert it to a weekend home. The church has been up for sale for quite some time, found this church which is a remarkable structure and has a lot of architectural integrity which "I" love and want to keep it that way and it is in rather good condition considering it dates back to 1823. However, it's on a very small piece of property a 1/3 of an acre. He hired an engineering firm, Tim Gottlieb of Gottlieb Engineering to do the engineering for the well and septic and it was quickly determined that the septic could not be placed on the church property it would not be able to sustain the septic. The current code requires 100 ft. offset between a neighboring well and a septic; and the quality of the soils at the church were not good and so this was not going to happen. Mr. Bremer stated he began to look around for other tax lots and they did find a lot across the street which is Red Hill Rd., is a small piece of pie shape property that has the Shadowland billboard on it. This property was gifted to the Shadowland Theatre of Ellenville in perpetuity. This piece of land is only a ¼ of an acre and we also know that billboards are not "loved" and are not things of great beauty, however, this is a form of advertisement for Shadowland Theatre and he does see what this theatre does bring to the town of Ellenville, it's a really cultural institution and that billboard considers significantly to that market and without that billboard they would lose considerable amount. Mr. Bremer did reach out to them and they voted to sell him the property at a reasonable sum of money and the property doesn't have an value as it's not buildable as it is and he had the engineer do a feasibility study for the septic and it worked beautifully and he would incur all the costs for going under the road and there would be a septic tank in the yard of the church and an affluent pump would pumping under the road to the discharge of course with the billboard remaining in the perpetuity of Shadowland Theatre which "I" have to respect.

He submitted the drawing to the Building Inspector and in fact was creating a mixed use condition the billboard is a non-conforming commercial use and he would be making it a mixed use with the septic; he has been told that there really is no precedent for granting use variances in this Town and it's not a precedent that the Town wants to begin setting and he understands and is sympathetic to that as he deals with very complex zoning in the city all the time but as such, those variances exist for a reason and

those reasons are for very specific conditions that may arise that are for very beautiful impediments of exceptions, etc. or by not granting it would be a detriment and to think that it would a betterment. Mr. Bremer presented pictures of the church along with renderings of possible changes; stated that he takes it very seriously that he might purchase this and he wants to bring it into the 21st century but will still be a part of the community. Mr. Bremer stated that he spoke to the Chairman of the Board of Shadowland who spoke to other similar owners of billboards on Rt. 209 between Wurtsboro and Ellenville and nothing really worked, the one that would be perfect was the one by the Nevelle and they are holding onto it as they have plans for it. Mr. Bremer introduced Ms. Jessica Loeser, Special Counsel on Zoning to speak on his behalf.

Ms. Loeser stated she would like to go over the technical points of a use variance and how it applies to this application. She wanted to note Mr. Bremer's passion and going beyond what is expected of a prospective owner in this historical preservation. This is an application to merge two zoning lots- different uses one for commercial and now residential. The reason for the merging of the two lots is that the septic tank has to be on the same building lot as the residence and because that residential lot is so small the septic system can't be on the same lot as the residence and this creates a hardship of how to comply the building lot to the health and safety requirements of the current code and make the building habitable.

The first finding- of the statue is economic hardship - this very application is being made because of the property lot, the church is unable to sell itself for fair market value if not for this health and safety upgrade and as Mr. Bremer stated it has been on the market for two years with no other buyers, no other accommodations public or private bidders were instant in the lot and so without this variance the property cannot meet fair market value to the property and again without an upgrade there really is no other adaptive use for development.

The second finding- is a uniqueness and this is a very unique situation for a couple of reasons; No. 1 the age of the building 1823 and no septic tank coupled with the small size of the lot makes a very weak situation and a very specific focus toward the application where its applicability to other building lots in the hamlet district its very, very small where you have these factors of the age of the building, its criterial of being upgraded for health and safety standards plus the small size.

The third requirement- is that the application does not affect the community character; in all of the pictures you saw that the exterior of the building will remain the same and the upgrades which are required will be done, the use will change but the character and the historical quality of the building remains the same.

The fourth requirement- the hardship is the septic tank and it is not self- rated and it is self-evident in that the new owner there was no history about the tank and the boundary of the lot have remain the same as far back as we can tell.

The final requirement- is that the variance request is the minimum required set forth as it can be, we are asking for what is required, we are not asking for "let's say 15 septic tanks" just the minimum required to bring the building lot up to code for health and safety and this application is really the last option for making this building habitable, beautiful and maintaining its standing in the community. That is matching it up to the building codes and if there are any questions from the Board, she would be glad to address them.

G. Rampe asked about the perc test that stated there the soils did not test good for any septic system on the lot. Mr. Bremer responded that he could not speak in the exact words as the engineer but it requires a much broader leaching field and it would not meet the setback.

M. Mordas asked if he had the actual perc test numbers that Mr. Gottlieb did and also he has a design here built on individual waste water treatment systems for residences and he would like to also run this by the Town Engineer, Mr. Paggi.

Mr. Bremer stated his engineer, Mr. Gottlieb stated there were no alternate systems feasible as well as the DOH also stated that. Mr. Bremer stated the results of the perc tests are on the drawings.

Ms. Loeser responded that they did not take this application "lightly" and if there is a better option than emerging another property lot, we would certainly welcome that information.

B. Martin asked if there was a well; Mr. Bremer responded yes there is and it is inside the building in the basement.

C. Dawkins asked about the billboard and if you plan on making the property a residential use, does the property has the billboard on it and will have a septic and that has a designation of commercial and how is that property used with the church building, so 10 years from now and so could this become a commercial use, the church property by virtue of that billboard.

Mr. Bremer responded the billboard is the only non-conforming commercial use. Counselor Cappello stated a billboard is not permitted in a Hamlet Zone so that's a prior non-conforming use the other issue is your combining actually at the end of the day, the two lots on either side of the street will become one lot so the septic system would have to be tied in; so you would have one lot on either side of the street with a single family home and a non-conforming billboard that I guess with the uniqueness that Shadowland can continue the use of the billboard, subsequent to that the use that is permitted. C.

Dawkins asked so the billboard status would not allow any other variance from that center. Counselor Cappello responded "no" they would have to address the use variance because the issue is the billboard and the ZBA would have to decide if conversion from residential to commercial should be allowed in a Hamlet Center Zone; the real issue here is the billboard on the same lot.

C. Dawkins asked about a second billboard; Counselor Cappello responded he doesn't believe that would be permitted.

Chairman Mordas read aloud Code 199-49 I –Non-conforming signs. Counselor Cappello stated that he believes billboards are permitted in that zone also it's pre-existing.

Mr. Bremer stated he believes the way his contract of sale stands right now is that Shadowland keeps the billboard in perpetuity, if they no longer need it, he would be required to take the billboard down which he has no problem with that.

Jim McIntyre member of the Fire Department and Vice-President of Shadowland Theatre stated his President of the theatre couldn't make it this evening but they are totally behind Mr. Bremer and he knows it's only assessed at \$300 so there's no financial gain here, however it's about being a good neighbor. He stated he went to the Building Dept. for a shed and drew a picture on a napkin so compare that to what this man has done and plans to do and it won't impact or hurt the community. There are a lot of small churches around the area and they want to combine them into one large church, they have the property and they need the capital to build this one unified church, so if they can sell some of the church to help with the money. The billboard is a major part of our marketing for Shadowland Theatre, there's no doubt about it – this is a win-win situation.

Bill Lucas lives next door to the church and his question concerns his well which on that side of his home and what is the setback or distance requirement. Chairman Mordas responded that you well is up hill from the proposed septic location of the church. You would need a 100 ft. separation.

B. Lucas stated he is talking about the septic container from the earth's gravity and being far enough away from my well.

Ms. Loeser responded that they would be required to meet the code. (multiple people speaking at the same time)

B. Lucas stated the church is the icon of the community. Chairman Mordas mentioned the view of Master Plan and possible being able to get rid of non-conforming uses one of them being the "billboard".

B. Lucas asked about any commercial uses being able to come in there, if any. Counselor Cappello responded the Town is going through the zoning process right now and it's in the code what's permitted in that zoning. The issue here is a residence is permitted, that's not the use variance, the use variance relates to the billboard being located on that lot and in the future someone can look at this code see what's permitted in that zoning district and you have size issues and if the commercial use is permitted they would have to do a commercial application and go before the planning board for a review.

C. Dawkins read aloud the permitted uses in the Hamlet Zone.

Ms. Loeser asked the Board a question that the Town is going through a re-zoning process – correct. So let's say in the final rezoning plan, let's say mixed uses are allowed on one single zoning lot in the next zoning addition, then we would not need to be here. Counselor Cappello responded potentially it could go away – but the bill board; Ms. Loeser responded the bill board is a creation of things to the code, it's a grandfathered conditioned which has a –but just to put it out there, let's just say we kind of split and the rezoning plan was completed before that property and in that was successful and in that was allowed to have mixed uses on one building lot, on one residential then there would be no need for a special permit, it just because of this technical point and it's important that this can't have an existing commercial and existing residential on the same zoning lot, but at the same time you have this potential residential use that needs to have a septic tank on this building lot for which there is no space on this lot. It's kind of a peculiar argument that in light of the re-zoning the potential to mitigate that fact in approving the application.

Mr. Wise-stated he would rather see the church preserved however, he is totally confused about the commercial/residential use. Especially the commercial because we are all concerned about that. Counselor Cappello stated granting of a use variance is to allow the residential use to exist with a non-conforming building however, if something came in the future for that residential use for a use that is permitted in the zone that use would've required a use variance and you can always convert a property that is subject to a use variance or any type of variance to a conforming use, so the turning point here is if the zoning changes and it conforms to a mixed use or commercial uses are permitted on that site the fact that a use variance is allowed for use doesn't preclude someone in the future from doing something that is permitted at that time. So commercial uses are permitted in that zone, the fact that this gentleman wants to do a residential use and he needs to put a septic system on a lot that has a billboard, if it wasn't for the septic issue or the septic issue was on that same lot as an alternative system someone could come in to convert that building to a use that is permitted in the zone code now. The use variance isn't for converting that building to a residential use or a commercial use or any other use, it's to have a septic system on the same lot with the billboard-which is two uses; one of them being non-conforming. It has nothing to do with commercial or residential, it's really has to do with the fact that the septic whether it serves residential or commercial it's because it's on the same lot as the billboard and that's subject of the use variance.

C. Dawkins stated that if in the future the church should change hands and someone wanted to make it into a commercial entity, it would be subject to a special use permit from the planning board and would have to meet many conditions and or requirements.

Ms. Loesser stated that this application does not “shoe horn in” any future commercial use that is not already under code.

J. McIntyre stated that Bill Collier did some research on other billboards that Shadowland could possibly use and they were unable to find any that were suitable. The only one would have been by the Nevele and they have plans for that one.

Chairman Mordas stated he was hoping they would be able to stand alone after approximately 40 years without having a billboard; J. McIntyre briefly explained their finances (marketing-they make only 46% of their budget)-also this theatre is helping to revitalize a lot of the businesses in Ellenville, such as restaurants. He further stated that if in the future they can do without the billboard perhaps they will “re-think” about using it.

C. Lesser stated he still doesn’t really understand the commercial/residential aspect and it will be on one lot. Counselor Cappello responded to this. He also wanted to know if a survey was done and especially of Red Hill Rd. because the center line is not always where it is shown; also you don’t always have to dig up the entire road when putting pipes under a road. Mr. Bremer responded that he is relying on the surveyor and also the one that was done by Shadowland. As for not digging up the road, whatever is the best way to do it, he will be happy to entertain it.

Pastor K. Mulqueen of Grace Methodist Church of Slate Hill and for the last four years or more he has been on the Board of Trustees of the NY Annual Conference of Methodist Church so he kind of represents the seller to Mr. Bremer and he wants to thank you for asking all the pertinent questions and for receiving this application and he can confirm that the difficulty of selling small county churches, as much as we love them, is very problematic and we have a number of them in the NY Annual Conference that we are trying to market and frankly we are happy that someone who has gone to the extent that Mr. Bremer has gone to get them property is the buyer and will be able to maintain the property so that it continues to be an asset to the community. Frankly, he’d love to have “10” Mr. Bremer’s to go around to all the other churches we need to sell because he has gone far beyond any other buyer has gone through to be in this community and I hope you respect this.

Chairman Mordas stated he did receive a letter from NY Annual Conference of the United Methodist Church submitted for the record. Mr. Bremer would also like to add a copy of that letter as well as a copy of a letter from the Board of Shadowlands also endorsing the sale and the respective variances as well as another letter from a Matthew Migliaccio the current Chairperson of the Phillipsport Community Center giving their endorsement for the project as well.

Mr. A. Weil asked if Shadowland pay real estate taxes or is it non-profit. Mr. McIntyre responded no they do not pay real estate taxes, however, if the sale takes place then it would be taxable.

B. Lucas asked how they would determine the distance from his well for the septic tank to make sure it is properly set, what is the process. The response was when they receive their septic permit, it will have to be measured from your well and the engineer will design it. Mr. Lucas wants it noted that he is concerned about his well and the proposed septic.

Ms. Loesser stated if there is an approved resolution in that document it can be so noted that a proper clearance must be maintained from any existing water well for the new septic tank, this can be made as part of a condition for any new C.O.

Chairman Mordas submitted for the record the letter he received from Mr. Migliaccio, President of the Phillipsport Community Center stating that “he” personally had no objection.

Mr. Migliaccio stated that he is giving his personal feelings.

Chairman Mordas stated that he feels there is more work to do here and he would like to make a motion to close the public hearing and add a 15 day comment written comment period. Counselor

Cappello also stated that if the Town Engineer provides a report the applicant be provided with a copy of that report and also of any comments that are received. The Board was in agreement. Motion made by G. Rampe to close the public hearing; second by C. Dawkins. All in favor. The Board is allowed 62 days to make a determination from the close of this meeting.

The secretary reminded everyone that the Zoning Board Office will be closed from July 29 thru August 8th.

Application of Patrick Arlotta-Tax Map Section 68; Block 1; Lot 37

Chairman Mordas asked Mr. Arlotta to present a brief presentation. Mr. Arlotta stated he represents his wife Marlene, sister-in-law Susan Schmaus and brother-in-law Frank Schmaus. We live on Winterton Road in a two family house that has an attached 40x60 barn which used to be feed and grain house on the old O&W, behind that barn was a structure approximately 45x30 that was taken down for insurance reasons and I replaced that structure with a smaller structure further off the property line with the consent of my neighbor at the time. He wasn't under the impression that he had to get a building permit, he supplied his neighbor George Vandeuier at the time with the sketch and he just wanted to make sure that it wasn't as big as the structure that was there, which it isn't and he put the building up, it's been there for 13 years. The Building Inspector came by and informed us that we were not conforming to the Building Code so he would like to apply for an area variance since this structure is not further off the property line than the previous structure.

G. Rampe asked what happened to the original structure. Mr. Arlotta responded it was in bad shape and had to be taken down for safety issues.

C. Dawkins asked what was the original dimension of that building – Mr. Arlotta responded it was 30x45 and the building that is there now is 26x40.

K. Findley asked him to explain this to him. Mr. Arlotta responded the railroad is in a curve of 1500 ft. radius so on one point the existing barn is on the line and because it's in a curve the other end of it is seven-tenths of a foot off and the addition he put on starts at 2 ½ ft. off and is almost 3 ½ ft. off at the other end.

M. Mordas stated so you converted an existing barn to a residence. Mr. Arlotta responded that's not correct, they asked M. Grass to come out to verify that this is incorrect and she has not come out yet. There is a section that has a laundry in it (washing machine, dryer, freezer but not living space).

C. Dawkins asked so you have a 2 story garage and barn that is not living space; Mr. Arlotta responded that is correct. How is this a two family. Mr. Arlotta stated one family downstairs and one upstairs with separate entrances.

Chairman Mordas asked about the old scale house office; how long have they lived there-response was 32 years. Chairman Mordas asked if they had any objection to any member of the Board stopping by to look at the property; Mr. Arlotta's response was "not at all."

C. Dawkins commented on the tax records. The Chairman asked if they had a property survey and or pictures the Board would like to see them.

C. Dawkins asked if there were two separate entrances when the property was bought and was it WRA; response was "yes."

Motion made by C. Dawkins to schedule a public hearing; second by G. Rampe. All in favor.

Michael Cerbo Public Hearing – Tax Map Section 72; Block 1; Lot 2.6

Present: Michael Cerbo

Chairman Mordas asked for a brief overview. M. Cerbo stated his residence is located at 334 Upper Road, it is a pre-fabricated garage/shed that was placed on the property before he bought it. It is placed closer to the road than his primary structure. He is asking for a variance for this structure.

Motion made by C. Dawkins to open the public hearing; second by G. Rampe. All in favor.

Chairman Mordas asked if there were any questions from the public. C. Lesser stated this really isn't a question but this seems like the same issue that was previously presented. Chairman Mordas responded it is similar, however, Mr. Cerbo did purchase the house knowing of this violation.

C. Dawkins responded she viewed the property and was totally surprised, you can't see it from the road at all, it's up a hill. G. Rampe was in agreement.

M. Mordas stated he feels the shed could be relocated.

M. Cerbo responded there is a fire pit there which we don't use but we would have to cut the trees down and excavate it back farther and I would have to hire someone to move it for me. Also, if I move it back, that's where we park our cars and if I have to get anything out of the shed then a vehicle would have to be moved.

C. Dawkins asked if it was on a concrete slab. M. Cerbo responded no it is on gravel.

There were no more questions from the Board.

Chairman Mordas proposed a variance for 199-C2 – make a motion for a variance for relief from that zoning regulation – Motion made by K. Findley; second G. Rampe. All in favor.

This is a Type 2 action under SEQR.

The following requirements for an area variance were read:

1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. K. Findley-no; G. Rampe-No; B. Martin-No; C. Dawkins-No; M. Mordas-No.

2) Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. K. Findley-Yes; C. Dawkins-Yes; G. Rampe-Yes; B. Martin-yes; M. Mordas-yes.

3) Whether the requested area variance is substantial. K. Findley-Yes; C. Dawkins-Yes; G. Rampe-Yes; B. Martin-Yes; M. Mordas-Yes.

4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. K. Findley-No; C. Dawkins-No; G. Rampe-No; B. Martin-No; M. Mordas-No.

5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of such variance. K. Findley-Yes; C. Dawkins-Yes;; G. Rampe-Yes; B. Martin-Yes; M. Mordas-Yes.

Motion made by K. Findley to grant the variance; second by G. Rampe, B. Martin-Yes; C. Dawkins-Yes M. Mordas voted no. Motion carries –variance granted. Benefit to the applicant exceeded any detriment to the public such as not having to cut any trees down, it is segregated, can't be seen from the local road.

Motion made by C. Dawkins to close the meeting; second by B. Martin. All in favor.

Respectfully submitted,

Linda Franck, Zoning Board Secretary

