

**TOWN OF MAMAKATING
ZONING BOARD OF APPEALS MEETING
AUGUST 24, 2016**

Present: Matthew Mordas-Chairman; Catherine Dawkins; Beverly Martin; Georgia Rampe; Kent Findley-Absent. **Zoning Board Attorney:** Steven Mogel

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

Patrick Arlotta Public Hearing-Tax Map Section 68; Block 1; Lot 37

Present: Mr. Arlotta

Motion made by C. Dawkins to open the public hearing; second by G. Rampe. All in favor. Beverly Martin recused herself from this application because the applicants are her neighbors.

Chairman Mordas asked Mr. Arlotta to come forward and start; Mr. Arlotta stated last month he was here applying for an area variance because the building they put up to replace the previous structure, the building he put up is actually smaller than the structure that was there and he was under the impression that he didn't need a building permit when he constructed this building.

G. Rampe asked which building it was on the map he had submitted, Mr. Arlotta pointed it out to her. Mr. Arlotta stated the dotted line was the original building and he showed the Board what he constructed which was 2 ft. narrower and 3 ft. shorter than what was there.

Chairman Mordas asked if he had found any historical photographs. Mr. Arlotta responded he searched on line for many days and the only thing he didn't do which someone told him about a couple of days ago was to go to the Sullivan County Historical Society in Hurleyville but he hasn't had a chance to go there. He did research all about the railroad and that crossing which is right in front of his house.

Counselor Mogel asked if the original building was totally demolished. Mr. Arlotta responded some of it and the part he replaced had to be because of insurance.

Chairman Mordas asked if it was originally attached. Mr. Arlotta responded "yes" when they bought the place and put the binder down the building was there and before everything was completed and the sale had gone through the previous owner took the structure down.

Mr. Arlotta stated they had the binder down in July of 1984 and there down payment was in August of 1984 and the closing was after September of 1984 so somewhere between then the structure was taken down. The previous owner, Joe Davis of Davis Feed & Grain Warehouse held the mortgage since there was no heating system in the building. The current structure was built in 2003.

No further questions from the Board at this time.

The Chairman asked if there was anyone from the public who would like to speak.

Kenneth Mann residing on the other side of the property line and the problem is it's on the property line and he has pictures and it's flooding his property, the snow hangs off and it's ruining his property, driveway, etc.

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He has tried to work with him but he doesn't want to. His driveway has been there since he owned the property, the water comes in the driveway and floods it and also goes into his garage. When the snow comes onto the driveway, he has no place to put it. He stated his garage is 10 ft. off the property line and the building in question is 2 ft. off the property line.

G. Rampe asked Mr. Mann if he had a survey of his property and he responded "no" not with him but he has had it done several times within the last three years.

Mr. Arlotta responded to a question from G. Rampe as to when it was rebuilt in 2003 that he rebuilt the building with the consent of the previous owner of Mr. Mann's property; his name was George VanDura. C. Dawkins asked if he had that in writing; Mr. Arlotta responded that he did not as Mr. VanDura passed away and his wife is in her 90's.

Marlene Arlotta stated she believes that Mr. Mann is confusing two issues because when he bought the home next door that building was already there and it was about 8 years before it became an issue for him when he started to claim the run off from the barn was ruining his driveway but the issue that we see is that he has parked many cars behind his garage which has eroded the grass so that what has caused the erosion problem from his respect and he was thinking it was from our barn that was causing the problem and that's what started all this. For eight years everything was fine. If he wants to park those cars he has every right, but that's what's eroding the ground.

Mrs. Debra Mann stated this has been going on for a longtime about 3 years and then a trench was built; then when we went to Court because we were going to try and get some gutters.

Chairman Mordas asked Mr. Arlotta why don't you put up the gutters. Mr. Arlotta responded because the erosion isn't from his roof, if the water does run off, there is a drip line but the distance between from where that water runs off and where he is complaining about is about 12 ft. it hits the grass and comes up on the other side. As far as the trench goes we had discussed the area, I told him maybe and then I told him no and then 6 months later he does the trench on his property without asking so "I" filled it in and then he built a berm on his property so like I said, I don't think the water running off the roof is causing the problem that he has because I used to mow that property for the previous owner, he parks cars there and grass can't grow that is causing the erosion, it's 15 to 20 ft. away from "my" lawn.

Mr. Mann stated he has the driveway all messed up so he parks his cars there.

C. Lesser stated this seems like a "he said, she said again" and he thinks the Board should possible intervene here and make some kind of a judgment and he would like to make a request that we have the public hearing extended so perhaps you can visit the site.

C. Dawkins responded that the Board members have seen the site individually.

C. Lesser then stated that the individual is allowed to knock down 3 walls of a dwelling as long as you keep one existing wall standing you are allowed to rebuild even if the dwelling is 200 years old as this goes on periodically so is this one of those cases.

Chairman Mordas responded that issue might arise but there are other issues along with that which might complicate things some as there is a large gap of time between demolition and construction so there are laws within the town about abandonment.

Mrs. Debra Mann stated Mr. Arlotta said it wasn't like this when he mowed the lawn, the fact is the overhang is on their property and that is totally irrelevant and the snow that comes off of that roof is huge and if someone gets hurt who will pay for that. So they started an action in Court.

Counselor Mogel stated that she had mentioned a "Judge" is there a court action? She responded "yes" they filed for a small claims for gutters and that's when the Judge referred them to the Building Dept., so there is a claim pending. That's how they found out no building permit was ever issued.

Mr. Arlotta showed a picture of the addition along with water running off the property line, the water running off is staying on his property. This is looking south from the corner.

Counselor Mogel advised the Board about voting since there is one Board member absent and one has recused. It will have to be unanimous. Chairman Mordas stated he would like to close the public hearing but not vote until we have all members present.

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

Chairman Mordas advised Mr. Arlotta that out of fairness if the vote should turn in to a "2 to 1" your variance request would be denied and he really feels that in all fairness and the fact that there is a lot of money at stake here, we should have another member here to participate in the vote and so he would like to table the meeting and have the vote next month when we have a full house and our member Kent Findley will be here.

Counselor Mogel stated the Board has 62 days by statute to come up with a decision but the Chairman is indicating that the Board is not making a decision right now and that there will be an opportunity to have another member of the Board to review it.

The next meeting will be September 22nd.

The public and applicants asked if they could submit further documentation.

Counselor Mogel then asked who made the motion to close the public hearing; Ms. Franck responded that was C. Dawkins and G. Rampe so he advised C. Dawkins she could make a motion to accept written comments for the next 10 days from this date, August 24th the second was made by M. Mordas. All in favor. The public hearing still remains closed only written comments are accepted.

Matthew Bremer – Tax Map Sections 8; Block 1; Lot 9 and Section 8; Block 3;

Lot 1

Present: Matthew Bremer

Chairman Mordas stated the public hearing is closed and we are really here to vote on the applicant's request and his request is for a use variance to create a mixed use parcel across the road from the church that he is under contract to purchase. He is going to ask his fellow Board members to address the area variance that will be needed. C. Dawkins stated the area variance is needed in order to meet the requirements for a single family detached dwelling a full acre is needed so that's where the area variance comes in.

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Mr. Bremer wanted to point out and make sure that all the Board members received the e-mail he sent where he offered specific language where this variance would essentially become a limited use. The language in his deed of sale that the use variance for the billboard would only be for the Shadowland Theatre and if they choose not to use it, I would have to take it down. Chairman Mordas stated he would like to put into the language, if this use variance is granted that the church property is only recognized as residential and even though they would be looked upon as combined parcel after you put a septic system on there that it would still be that the mixed use **would not extend** to the church property. Mr. Bremer responded that he was fine with that. C. Dawkins stated that would be lot No. 2; so the mixed use would apply to only lot #2. It can be defined by Section 8; Block 3; Lot 1 which is the lot that has the billboard on it.

Counselor Mogel stated he wants to point out to the Board that an "Accessory Use or Structure" is a use or structure is subordinate to the principle structure on the same lot serving the purpose of incidental for the purpose of that lot" so it's possible that the Building Inspector is looking at this and saying that you'd also have to have an Area Variance from 199-13 that says an accessory use has to be on the same lot.

C. Dawkins stated she thinks the language in the e-mail that was submitted seems to accomplish what everyone is looking for except for maybe a few additions-the billboard and residential structure.

Counselor Mogel stated what this would be from a legal stand point is conditioned on a Use Variance and he thinks these are good conditions and he thinks it's something the Board should definitely consider if he can give his opinion, especially since the Board has expressed concern about them.

C. Dawkins suggested that the Town Engineer either design or review the piping going under the road.

Chairman Mordas responded he is going to do that with the septic and the piping as well as bonding.

Counselor Mogel stated what would be appropriate for the Board to do would be to add as a condition if they were to grant this would be that: "all appropriate requirements by the Highway Department and the Town Board would be followed and that would include bonding issues also probably an easement and most likely a license if they have to go under the road and all that would be reviewed by the Town Attorney.

C. Dawkins asked if someone should violate the terms they have with the Town Board pertaining to a condition of a "use variance" would that nullify the variance. Counselor Mogel believes it would since that condition was part of the variance.

Chairman Mordas stated he would like a requirement of the demolition of the billboard if Shadowland ceases to exist or voluntarily chooses to forgo use of billboard.

Counselor Mogel stated the church (Section 8; Block 1; Lot 9) will require an area variance for rear yard setback of 18 ft. The requirement is 35 and they have 17.

Counselor Mogel stated the billboard lot is (Section 8; Block 3; Lot 1) and this will require a variance for an accessory use on a separate parcel and the lot is less than one acre; you will

need an area variance for both lots? However, when the lots are combined the variances will become "moot."

Motion requested that the Town of Mamakating Zoning Board declares itself Lead Agent.
Motion made by C. Dawkins; second by B. Martin.

Chairman Mordas read the 239 referral that was received back from Dept. of Planning.
This is an unlisted action under SEQR which requires a review.

The following requirements were read by the Chairman and answered by the Board:

- 1) Will the proposed action create a material conflict with an adoptive land use plan or zoning regulation. No - small impact may occur; moderate to large impact may occur.
The Board responded No – it doesn't create the problem, the billboard is the problem
- 2) Will the proposed action result in a change in the use or intensity of use of land.
Board response – Small.
- 3) Will the proposed action impair the character or quality of the existing community?
Board response – Small.
- 4) Will the proposed action have an impact on the environmental characteristics that caused the establishment of the critical environmental area?
Board response – Small.
- 5) Will the proposed action result in an adverse change in the existing level of traffic or affect the existing infrastructure for mass transit, biking or a walkway.
Board response – Small.
- 6) Will propose action cause an increase in the use of energy and fails to incorporate reasonably available conservation or renewable energy opportunities. Board response – Small.
- 7) Will propose action impact existing public or private water supply or public or private water treatment utilities. Board response – Small.
- 8) Will propose action impair the character or quality of important historic or archeological architectural or aesthetic resources. Board response-Small.
- 9) Will the proposed action result in the adverse change to natural resources; e.g., wetlands, waterbodies, groundwater, air quality, flora & fauna. Board response-Small.
- 10) Will the proposed action result in an increase in the potential for erosion flooding or drainage problems? Board response-Small.
- 11) Will the proposed action create a hazard to environmental resources or human health?
Board response – Small.

Counselor Mogel stated you now have a negative declaration.

C. Dawkins stated that she's hesitant in doing a use variance but also in her mind this is the only way you can make this property useful and we have an applicant that is willing to go to great lengths and expense to make this property usable so she finds there is no other alternative to make this property viable and not become a burden to the town and an eyesore.

Chairman Mordas stated he would like to add to that statement that “slowly but surely” we are amassing an inventory of legally used or up for sale churches for whatever reason and they don’t seem to be selling to quickly and he likes this idea and we have an applicant here in Mr. Bremer who seems eager to preserve the historical nature of this church or the landmark nature of this

church and he doesn’t see any other way to revitalize the structure in a useful way other than having a church congregation there which doesn’t seem to be in the works and he feels that based on a lot of comments from the public that this is one of the few situations that he has come across so far in his position as Chairman that a use variance is a good thing here.

C. Dawkins certainly hopes that the property owner understands that this is a big thing of this community and hopes that he becomes a part of it.

B. Martin complemented Mr. Bremer on his professional presentation.

Chairman Mordas read the following criteria for Area Variance for the Rear Yard Setback which is 18 ft.

- 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. C. Dawkins-No; G. Rampe-No; B. Martin-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. C. Dawkins-No; G. Rampe-No; B. Martin-No; M. Mordas-No.
- 3) Whether the requested area variance is substantial. 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. 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. C. Dawkins-No; G. Rampe-No; B. Martin-No; M. Mordas-No.

Chairman Mordas stated as per the Bulk Table Requirement for the Hamlet Center the relief required is .48 and .52 relief in acreage. The lots will be combined.

The Chairman read the following pertaining to the Area Variance for Bulk Table Requirements.

- 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. C. Dawkins-No; G. Rampe-No; B. Martin-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. C. Dawkins-No;

- G. Rampe-No; B. Martin-No; M. Mordas-No.
- 3) Whether the requested variance is substantial. 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.
 - 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. C. Dawkins-No; G. Rampe-No; B. Martin-No; M. Mordas-Yes.

Chairman Mordas asked for a variance for rear yard setback of 18 ft. Motion made by G. Rampe to grant the variance for the setback; second by C. Dawkins. All in favor.

Chairman Mordas stated since the lots will be combined this Area Variance for the Bulk Table Requirements will cover both of them. A motion was requested to offer Mr. Bremer relief of .52 acres from the Hamlet Center criteria. Motion made by B. Martin; second by C. Dawkins. All in favor.

Chairman Mordas stated that for a Use Variance that the applicant must show that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the boards of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located. The Chairman read the following criteria:

- 1) The applicant cannot realize a reasonable return, provided the lack of return is substantial as demonstrated by competent financial evidence. C. Dawkins-Yes, they cannot according to Bulk Table requirements; G. Rampe-Yes; B. Martin-Yes; M. Mordas-Yes.
- 2) 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. Dawkins-Yes; G. Rampe-Yes; B. Martin-Yes; M. Mordas-Yes.
- 3) The requested use variance, if granted, will not alter the essential character of the neighborhood. C. Dawkins-Yes; G. Rampe-Yes; B. Martin-Yes; M. Mordas-Yes.
- 4) The alleged hardship has not been self-created. C. Dawkins-Yes; G. Rampe-No; B. Martin-Yes; M. Mordas-No.

C. Dawkins stated that any use for this church property other than a church will require a septic system.

Chairman Mordas requested a motion for a Use Variance based on the following conditions: that all Town Board requirements in regards to utility, piping under the road are met; bonding; easements that are required; Town Engineering review and approve the septic and road crossing. The condition will be that the applicant combine those two lots but the church lots always be recognized as residential use. The lots are Section 8-1-9 and 8-3-1.

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Another condition will be that the following language be recorded in the deed of sale to the applicant and the language be as follows: the billboard shall be for Shadowland Theatre use alone and should Shadowland cease to exist or begin to benefit from another billboard along Rt. 209 the owner of parcel 8.1-9 shall bear the cost and removal of the billboard and the billboard ceases to be used by Shadowland Theatre; the zoning variance and use variance granted by the Board shall be extinguished and the combined lots shall be for a single residential use. Chairman Mordas asked what about in the interim while the billboard still exists what prevents the church lot from being used as a commercial lot. Counselor Mogel responded it's a Use Variance to allow the mixed usage of a single family residence with a billboard. C. Dawkins stated we chose a specific use out of the Bulk Table which was a single family residence combined with the billboard. It's a mixed use with a commercial use on the billboard lot and a one family residential on the church lot with all the conditions previously set forth.

Motion made by C. Dawkins; second by B. Martin. All in favor.

Motion made by G. Rampe to close the meeting; second by M. Mordas. All in favor.

Respectfully submitted,

Linda Franck,
Zoning Board Secretary