

In The Matter Of:
Town of Mamakating
Zoning Board of Appeals

J. Zupetz, Jr.
2-23-17
February 23, 2017

Jeric Corporation
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COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

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John Zupetz, Jr., Public Hearing
Tax Map Section 10: Block 1; Lot 48.9
Burlingham Residential Zone

----- X

Town Hall
Town of Mamakating
February 23, 2017
7:41 P.M.

ZONING BOARD MEMBERS :

- MATTHEW MORDAS, Chairman
- BEVERLY MARTIN, Board Member
- CATHERINE DAWKINS, Board Member
- GEORGIA RAMPE, Board Member
- KENT FINDLEY, Board Member
- GRAHAM VEST, Alternate Board Member
- STEVEN MOGEL, ESQ., Attorney

Also Present: John Zupetz, Jr.

JERIC CORPORATION
Court Reporting Services
P.O. Box 385
Narrowsburg, New York 12764

Reported By: Rosemary A. Meyer

1 - RE: J. ZUPETZ., JR. -

2 CHAIRMAN MORDAS: Next on our agenda is, let's see.
3 The Mann Clan, Gary and Kim Mann, Bashakill Recycling.

4 BOARD MEMBER DAWKINS: This appeared on the agenda,
5 but I haven't received a package yet.

6 MR. MOGEL: I never got a packet on this, I got a
7 piece of paper. And if nobody is here ...

8 CHAIRMAN MORDAS: Next on the agenda is the public
9 hearing for Mr. John Zupetz.

10 MR. ZUPETZ, JR.: Good evening.

11 CHAIRMAN MORDAS: Thanks for your patience.

12 Why don't you refresh the Board with what you're
13 trying to accomplish here.

14 MR. ZUPETZ, JR.: Sure. So I was at the Zoning Board
15 of Appeals last month and talked about an existing shed
16 that was closer to the street than the wall of my home and
17 so we moved to public hearing.

18 I took the Board's advice. Since the last meeting, I
19 reduced the size of the two-car garage to replace the shed
20 that I currently have in place. You'll see the dimensions
21 there. The garage, 28 by 32; the porch 8 by 32; and the
22 loft, 10 by 16; for a total of 1300 square feet,
23 approximately.

24 CHAIRMAN MORDAS: Thanks.

25 MR. ZUPETZ, JR.: Sure.

1 - RE: J. ZUPETZ., JR. -

2 CHAIRMAN MORDAS: Any questions from the Board.

3 BOARD MEMBER FINDLEY: Will there be any utilities in
4 this?

5 MR. ZUPETZ, JR.: It'll have electric, yes.

6 BOARD MEMBER FINDLEY: And that's the only utility?

7 MR. ZUPETZ, JR.: That's it. Just for a garage door
8 opener and lights.

9 BOARD MEMBER FINDLEY: No water?

10 MR. ZUPETZ, JR.: No water.

11 CHAIRMAN MORDAS: Do you feel you have that hillside
12 suitably retained?

13 MR. ZUPETZ, JR.: Yes, I do. It's a good question. I
14 actually consulted with a civil engineer, a friend of mine
15 who's in my parish at church, and we talked about, you
16 know, putting a small retaining wall over where the rocks
17 are. I know someone from the board visited the site. But
18 that would actually cause more hydrologic pressure on the
19 back side of the wall, so the feeling was leave it natural.
20 We'll probably do some excavating near the top to get rid
21 of the mound that's up there.

22 CHAIRMAN MORDAS: Step it a little bit?

23 MR. ZUPETZ, JR.: Yeah, exactly; just a few steps.

24 But the perc rate on the property is less than a three
25 minute perc so it's very well drained. It's been in the

1 - RE: J. ZUPETZ., JR. -

2 current condition for a few years. There's no erosion in
3 the soil or anything like that.

4 CHAIRMAN MORDAS: I feel you have one more option to
5 locate this garage closer to the back, the front wall, away
6 from the street, but I determine that you would still need
7 a variance.

8 MR. ZUPETZ, JR.: Yes, exactly.

9 CHAIRMAN MORDAS: Personally, I like the location of
10 this. I think it's going to enhance your house and not be
11 a detriment to the neighborhood.

12 Any other board members have any questions?

13 (No verbal response.)

14 CHAIRMAN MORDAS: Oh, sorry. Motion to open up public
15 hearing.

16 BOARD MEMBER MARTIN: So moved.

17 BOARD MEMBER DAWKINS: I'll second that.

18 CHAIRMAN MORDAS: All in favor?

19 BOARD MEMBER MARTIN: Aye.

20 BOARD MEMBER RAMPE: Aye.

21 BOARD MEMBER DAWKINS: Aye.

22 BOARD MEMBER FINDLEY: Aye.

23 CHAIRMAN MORDAS: Aye.

24 (The motion was approved and carried.)

25 CHAIRMAN MORDAS: Mr. Leser.

1 - RE: J. ZUPETZ., JR. -

2 MR. LESER: Chris Leser.

3 I'm a little confused here. Are we discussing the
4 garage that this gentleman has or the shed that's alongside
5 of the garage, forward of the house?

6 CHAIRMAN MORDAS: The shed is going to be removed.

7 What is going to be the disposition of the current
8 shed?

9 MR. ZUPETZ, JR.: It's going to stay in place until I
10 start construction on this. That would be the idea.

11 CHAIRMAN MORDAS: And what do you plan on doing with
12 that shed once you start construction?

13 MR. ZUPETZ, JR.: It'll be demolished.

14 CHAIRMAN MORDAS: Okay.

15 MR. LESER: I thought -- it's an accessory structure.
16 I thought that was the issue, the accessory structure.

17 CHAIRMAN MORDAS: It was one of the issues, but I
18 guess we're going to kill two birds with one stone here.
19 So instead of granting a variance for the old shed, they're
20 going to remove the old shed once they commence building
21 the new shed, and they'll be granted a variance at that
22 time. Well, that's what he's requesting.

23 MR. LESER: It's a nice place. You have a nice home
24 up there, a nice area.

25 MR. ZUPETZ, JR.: Oh, thank you. Thank you.

1 - RE: J. ZUPETZ., JR. -

2 BOARD MEMBER FINDLEY: A variance is a variance. It
3 wouldn't matter if it was the shed or the garage.

4 CHAIRMAN MORDAS: That's right.

5 BOARD MEMBER RAMPE: He has the appropriate setbacks
6 with the new garage.

7 BOARD MEMBER FINDLEY: We looked at that last time,
8 yes.

9 CHAIRMAN MORDAS: Yes.

10 BOARD MEMBER RAMPE: No, I wasn't here.

11 BOARD MEMBER DAWKINS: So the issue is that the garage
12 is closer --

13 BOARD MEMBER RAMPE: Closer to the road than the
14 house.

15 CHAIRMAN MORDAS: Do you think that's the case? He's
16 in violation. Would we have to address that violation?

17 MR. MOGEL: No. We were requested to do an area
18 variance, and I don't see a Notice of Violation being
19 issued for appeal so that's not before the Board. The only
20 issue in front of the Board is the area variance.

21 CHAIRMAN MORDAS: Right.

22 MR. MOGEL: And I will opine that --

23 Did you receive a Notice of Violation?

24 MR. ZUPETZ, JR.: No. No need to stir.

25 CHAIRMAN MORDAS: Pardon me?

1 - RE: J. ZUPETZ., JR. -

2 MR. ZUPETZ, JR.: No need to stir.

3 CHAIRMAN MORDAS: Any other questions from the public?

4 (No verbal response.)

5 CHAIRMAN MORDAS: Any other questions from the Board?

6 BOARD MEMBER FINDLEY: When's construction going to
7 start?

8 MR. ZUPETZ, JR.: That's based on the budget. I'd
9 hope that it would start soon, but maybe by end of year. I
10 mean if I could do it before it gets too far into the
11 season.

12 BOARD MEMBER RAMPE: The only issue is he's looking
13 for a variance to have an accessory structure closer to the
14 road which he has in existence, but now it's going to make
15 it worse by increasing the size of it.

16 CHAIRMAN MORDAS: True.

17 BOARD MEMBER RAMPE: Right?

18 CHAIRMAN MORDAS: Yes.

19 BOARD MEMBER RAMPE: I mean even though he does have
20 the setbacks. But now, instead of this being a smaller
21 shed, there's going to be a large structure.

22 CHAIRMAN MORDAS: All right. So there was no
23 violation, then.

24 MR. MOGEL: There's no violation as far as I can
25 determine. The applicant indicates there's no Notice of

1 - RE: J. ZUPETZ., JR. -

2 Violation.

3 MR. ZUPETZ, JR.: Right.

4 A notification was sent out before the hearing to all
5 of the neighbors, which they had comments.

6 CHAIRMAN MORDAS: To ask a question I usually ask, was
7 the mailing done -- correctly. I would say that to my
8 secretary and she would respond usually yes.

9 MR. MOGEL: Yes.

10 MR. ZUPETZ, JR.: I have receipts of the five
11 adjacents and I've received four of the cards back for
12 return receipt.

13 CHAIRMAN MORDAS: Okay.

14 MR. ZUPETZ, JR.: Would you like to see them?

15 CHAIRMAN MORDAS: I'm going to ask you to initial some
16 paperwork.

17 MR. ZUPETZ, JR.: Sure.

18 CHAIRMAN MORDAS: You could leave it over there on the
19 way out, Mr. Zupetz.

20 MR. ZUPETZ, JR.: Okay.

21 BOARD MEMBER DAWKINS: Have you spoken with your
22 neighbor? It seems to me that last month we asked about it
23 and you know spoken with some of them.

24 MR. ZUPETZ, JR.: Yes, yes. One of my neighbors is
25 the potential person who would build this, Frank Roe. He's

1 - RE: J. ZUPETZ., JR. -

2 the contractor. My neighbor Joe Negangas (phonetic) had
3 called me this morning and asked if he needed to be here
4 and I said: Unless you want to tell them I'm a terrible
5 neighbor, no.

6 And then I didn't hear from Camp Echo other than I did
7 receive their card, the return receipt. And then my other
8 neighbor, Donnelly, I did not hear back from them at all.

9 MR. UNIDENTIFIED SPEAKER: So you're between the Roes
10 and the Negangas.

11 MR. ZUPETZ, JR.: Correct, right at the end.

12 CHAIRMAN MORDAS: Georgia, do you have any more
13 questions?

14 BOARD MEMBER RAMPE: No. Thank you.

15 CHAIRMAN MORDAS: All right. Motion to close the
16 public hearing.

17 BOARD MEMBER DAWKINS: Your comment about when you're
18 planning to build, is there a time limit associated with
19 the variance before it would expire if he has not built?

20 MR. MOGEL: Not unless you guys establish a condition.
21 I mean building permits have expiration dates --

22 BOARD MEMBER DAWKINS: Right, right.

23 MR. MOGEL: -- but variances don't ordinarily unless
24 you were to condition the variance.

25 BOARD MEMBER FINDLEY: And does the variance apply to

1 - RE: J. ZUPETZ., JR. -

2 a specific structure or any structure?

3 MR. MOGEL: Well, I mean representations are made to
4 the Board that that structure is going to appear a certain
5 way, be a certain size. If --

6 CHAIRMAN MORDAS: Well, I'm going to have him sign off
7 on this paperwork that this is what the variance is granted
8 for.

9 MR. ZUPETZ, JR.: Okay.

10 CHAIRMAN MORDAS: It's up to the building inspector.
11 She can go back and basically violate him if she's not
12 satisfied with the progress of the project.

13 BOARD MEMBER FINDLEY: I'm just asking.

14 MR. ZUPETZ, JR.: Well, it's a good question because I
15 asked the same question. I said: Listen, this is what I'd
16 like to build. This is my dream, to build a two-car
17 garage.

18 BOARD MEMBER FINDLEY: Right.

19 MR. ZUPETZ, JR.: I can't say that I'm going to have
20 the funding to do this in two months, so I asked. And the
21 answer that I got back, at least from Linda I, think it
22 was, was the variance goes with the land so the variance is
23 the variance, and so there wasn't a time limit. I
24 understand there's a time limit on building permits. I
25 wouldn't issue or go for a building permit until I was sure

1 - RE: J. ZUPETZ., JR. -

2 that I had the funds to build.

3 BOARD MEMBER FINDLEY: What I was asking is if we
4 issued the variance and the variance is, let's say for the
5 shed, for argument's sake, does that give him the variance
6 for the building, the future proposed building.

7 MR. MOGEL: So if I understand properly, if he's
8 making a request for a shed, certain dimensions, and if a
9 building was constructed that is not those dimensions and
10 not that use, would the variance apply, the answer is no.
11 I mean there are representations that are made and that's
12 the basis of the variance. So if there's a material
13 deviation from that, then the variance isn't going to
14 apply. It would have to be material, though. I think
15 everybody acknowledges that inches, a few inches here and
16 there, if something were to deviate based on facts on the
17 ground --

18 BOARD MEMBER FINDLEY: I'm going to ask it slightly
19 different. So let's say we grant the variance and for five
20 years he doesn't build the shed and he wins 10,000 in the
21 lottery, he say, I'm going to build my shed now, is the
22 variance good?

23 MR. MOGEL: Yes.

24 BOARD MEMBER DAWKINS: Yes, as long as he builds this.

25 MR. MOGEL: That.

1 - RE: J. ZUPETZ., JR. -

2 BOARD MEMBER FINDLEY: Yes.

3 MR. ZUPETZ, JR.: Not to exceed and the same style.

4 MR. MOGEL: Correct.

5 BOARD MEMBER DAWKINS: I don't think it's necessarily
6 not to exceed. I think it is this.

7 MR. ZUPETZ, JR.: Yes.

8 BOARD MEMBER DAWKINS: So honestly, even if you went
9 in and put a pre-fab shed that you got at Lowe's that was a
10 quarter of the size of this, this is what we agree to.

11 MR. MOGEL: Correct.

12 MR. ZUPETZ, JR.: Understood.

13 BOARD MEMBER DAWKINS: We don't want some unsightly
14 something --

15 MR. ZUPETZ, JR.: Sure.

16 BOARD MEMBER DAWKINS: -- sitting in that location.

17 MR. ZUPETZ, JR.: I wouldn't do that.

18 BOARD MEMBER DAWKINS: This is the representation.

19 CHAIRMAN MORDAS: All right.

20 MS. MATTERN: I'm sorry. I was just wondering if the
21 variance, if you give the variance, if that applies to the
22 shed that's there now, too.

23 CHAIRMAN MORDAS: No.

24 BOARD MEMBER DAWKINS: That shed is going to come
25 down.

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2 MS. MATTERN: Right.

3 BOARD MEMBER FINDLEY: But if it's for five years --

4 MS. MATTERN: But from now until when it comes down,
5 that shed is in violation?

6 BOARD MEMBER DAWKINS: We don't know that. We have no
7 idea. We have not be told whether that shed is in
8 violation, whether there was a previous zoning approval for
9 it or not.

10 BOARD MEMBER FINDLEY: Well, he was recommended to the
11 Zoning Board because that was in --

12 MR. MOGEL: But jurisdiction of the matter is not
13 before the Board. The Board doesn't have the discretion to
14 say we're vacating any possible violation for that shed.

15 Realistically speaking, I don't imagine the building
16 department violating if the Board were to grant the
17 variance for a larger structure in the same location. I
18 realistically don't see. Knowing the building department,
19 I don't see them violating him on that basis, in which you
20 would bring an appeal here before the Board.

21 MR. ZUPETZ, JR.: Understood.

22 CHAIRMAN MORDAS: Go ahead, Mr. Lybolt.

23 MR. LYBOLT: Yes. I'm Dave Lybolt.

24 So basically, what you're saying is the variance is
25 granted for a certain size shed, maximum. If he builds a

1 - RE: J. ZUPETZ., JR. -

2 smaller shed, he's okay. But if he builds a bigger shed --

3 CHAIRMAN MORDAS: No. It's granted, as Steve said,
4 within reason, this shed.

5 MR. MOGEL: That shed.

6 CHAIRMAN MORDAS: This shed.

7 MR. LYBOLT: That specific shed that he --

8 CHAIRMAN MORDAS: Correct. We're not going to quibble
9 over a half foot here or a half foot there.

10 MR. LYBOLT: But if he built a smaller shed ...

11 BOARD MEMBER DAWKINS: This is the representation he
12 gave us.

13 MR. LYBOLT: So that's what he said --

14 BOARD MEMBER DAWKINS: What we're saying is he has
15 that other shed ...

16 MR. LYBOLT: I got it. I got it.

17 CHAIRMAN MORDAS: Any other questions?

18 (No verbal response.)

19 CHAIRMAN MORDAS: Motion to close the public hearing.

20 BOARD MEMBER FINDLEY: I'll make that motion.

21 BOARD MEMBER RAMPE: I'll second it.

22 CHAIRMAN MORDAS: All in favor?

23 BOARD MEMBER MARTIN: Aye.

24 BOARD MEMBER RAMPE: Aye.

25 BOARD MEMBER DAWKINS: Aye.

1 - RE: J. ZUPETZ., JR. -

2 BOARD MEMBER FINDLEY: Aye.

3 CHAIRMAN MORDAS: Aye.

4 (The motion was approved and carried.)

5 CHAIRMAN MORDAS: Okay. All right. I'm going to try
6 to craft a variance here.

7 MR. MOGEL: The criteria.

8 CHAIRMAN MORDAS: Well, I was going to craft the
9 variance and then go through the criteria, then we'll ...

10 MR. MOGEL: Okay.

11 CHAIRMAN MORDAS: Basically granting Mr. Zupetz relief
12 from 199-13(c)(2), construction of an accessory structure
13 closer to the street than the front wall of his main house,
14 according to the plans submitted tonight, this date, 2-23,
15 and only for the plans that have been submitted, and the
16 location.

17 Okay. Let me ...

18 MR. MOGEL: Give me a second.

19 Did you actually make the motion or you called for it?

20 CHAIRMAN MORDAS: No. I'm going to make the motion.
21 I'm getting a little confused here.

22 Is that language satisfactory? Do I have a motion for
23 us to vote on that variance?

24 BOARD MEMBER DAWKINS: So moved.

25 CHAIRMAN MORDAS: Do I have a second?

1 - RE: J. ZUPETZ., JR. -

2 BOARD MEMBER MARTIN: Second.

3 CHAIRMAN MORDAS: All in favor?

4 BOARD MEMBER MARTIN: Aye.

5 BOARD MEMBER RAMPE: Aye.

6 BOARD MEMBER DAWKINS: Aye.

7 BOARD MEMBER FINDLEY: Aye.

8 CHAIRMAN MORDAS: Aye.

9 (The motion was approved and carried.)

10 CHAIRMAN MORDAS: I'm going to read the criteria, then
11 we'll vote on granting the variance.

12 In making its determination, the Zoning Board shall
13 take into consideration the benefit to the applicant if the
14 variance is warranted as weighed against the detriment to
15 the health, safety and welfare of the neighborhood or
16 community by such grant.

17 In making such determination the Board shall also
18 consider whether an undesirable change will be produced in
19 the character of the neighborhood or a detriment to nearby
20 property will be created by the granting of the variance.

21 Kent.

22 BOARD MEMBER FINDLEY: Can you -- usually the question
23 -- no. I'll go with no.

24 BOARD MEMBER DAWKINS: No.

25 BOARD MEMBER RAMPE: No.

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2 BOARD MEMBER MARTIN: No.

3 CHAIRMAN MORDAS: All right. I'm going to say no.

4 Whether the benefit sought by the applicant can be
5 achieved by some method feasible for the applicant to
6 pursue other than an area variance.

7 BOARD MEMBER FINDLEY: Yes.

8 BOARD MEMBER DAWKINS: Yes.

9 BOARD MEMBER RAMPE: Yes.

10 BOARD MEMBER MARTIN: Yes.

11 CHAIRMAN MORDAS: I'm going to say no.

12 CHAIRMAN MORDAS: Whether the requested area variance
13 is substantial.

14 BOARD MEMBER FINDLEY: Yes.

15 BOARD MEMBER DAWKINS: What is the property ...

16 MR. ZUPETZ JR.: Total acreage?

17 BOARD MEMBER DAWKINS: Okay. Yes, yes.

18 BOARD MEMBER RAMPE: Yes.

19 BOARD MEMBER MARTIN: Yes.

20 CHAIRMAN MORDAS: Yes.

21 Whether the proposed variance will have an adverse
22 effect or impact on the physical or environmental
23 conditions in the neighborhood or district.

24 BOARD MEMBER FINDLEY: No.

25 BOARD MEMBER DAWKINS: No.

1 - RE: J. ZUPETZ., JR. -

2 BOARD MEMBER RAMPE: No.

3 BOARD MEMBER MARTIN: No.

4 CHAIRMAN MORDAS: No.

5 Whether the alleged difficulty was self-created, which
6 consideration shall be relevant in the decision of the
7 Zoning Board but shall not necessarily preclude the
8 granting of the area variance.

9 BOARD MEMBER FINDLEY: Yes.

10 BOARD MEMBER DAWKINS: Yes.

11 BOARD MEMBER RAMPE: Yes.

12 BOARD MEMBER MARTIN: Yes.

13 CHAIRMAN MORDAS: Is that "yes" across the board?

14 BOARD MEMBER RAMPE: Yes.

15 CHAIRMAN MORDAS: Yes.

16 Okay, time for the vote. How do you vote on this,
17 granting Mr. Zupetz' variance?

18 BOARD MEMBER FINDLEY: Why do I always go first?

19 BOARD MEMBER DAWKINS: Because you're sitting there.

20 BOARD MEMBER FINDLEY: Yes. I vote yes.

21 BOARD MEMBER DAWKINS: Yes.

22 CHAIRMAN MORDAS: Georgia.

23 BOARD MEMBER RAMPE: Yes.

24 CHAIRMAN MORDAS: Beverly.

25 BOARD MEMBER MARTIN: Yes.

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2 CHAIRMAN MORDAS: I vote yes, too.

3 BOARD MEMBER RAMPE: That's it. You got your
4 variance.

5 MR. ZUPETZ, JR.: Thank you very much.

6 BOARD MEMBER MARTIN: Good luck.

7 CHAIRMAN MORDAS: Good luck with your project.

8 MR. ZUPETZ, JR.: Initial these?

9 CHAIRMAN MORDAS: Yes. Please initial these and date
10 it.

11 (Mr. Zupetz complied.)

12 BOARD MEMBER FINDLEY: Did we make a motion to
13 adjourn?

14 CHAIRMAN MORDAS: Motion to close our meeting tonight?

15 BOARD MEMBER FINDLEY: I second that.

16 CHAIRMAN MORDAS: All in favor?

17 BOARD MEMBER FINDLEY: Aye.

18 BOARD MEMBER DAWKINS: Aye.

19 BOARD MEMBER RAMPE: Aye.

20 BOARD MEMBER MARTIN: Aye.

21 CHAIRMAN MORDAS: Aye.

22 (The motion was approved and carried.)

23 (Time noted: 7:59 p.m.)

24 * * * * *

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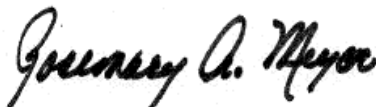
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REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings in the matter of Application of John Zupetz, Jr. to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.



ROSEMARY A. MEYER

Date Transcribed: April 2, 2017

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