

**City of Oneida
Planning Commission Zoning Board of Appeals
Meeting Minutes
May 9, 2023**

The regular meeting of the Planning Commission Zoning Board of Appeals was held on Tuesday, May 9, 2023, at 6:00 p.m. in the Common Council Chambers, City Hall, 109 N. Main St. Oneida, NY.

The meeting was called to order at 6:03 pm by Chairman Fred Meyers.

PRESENT: Fred Meyers
Todd Schaal
Randy Bonville
Pat Thorpe
Perry Tooker
Barbara Henderson
Kipp Hicks

ALSO PRESENT: Christopher Henry, Director of Planning
Brian Burkle, Fire Marshall

Absent:

RESOLVED, that the Tuesday, April 11, 2023, PCZBA meeting minutes are hereby approved.

Discussion: Kipp Hicks requested that it be made of record in the 5/9/23 minutes that he felt there was much more conversation related to the Wind Project regarding conversations with the public outlining their concerns with the impacts of blasting. He also wished it would be noted that there was more conversation related to the height variance request. He stated that nothing necessarily had to be changed in the minutes but wished it to be noted in the record for this meeting.

**Moved by Pat Thorpe
Seconded by Kipp Hicks**

**Aves: 7
Nays: 0**

Motion Carried

Item #1- Area Variances for 50' of Frontage, 15,984 sq.ft. of lot size, and a 2-Lot Minor Subdivision to allow for the construction of a one-family dwelling located at 1445 W. Elm Street, Tax Map Number 29.-2-41.1, zoned A and M-I, by George Clark, file# 2023-006/7.

The applicant was in attendance.

Chris explained the process of what is being proposed. He describes that a local law was introduced to the Common Council. They will ultimately need to approve the Zoning Amendment. He further explained that this SEQR review is for the Subdivision, and the Zoning Amendment will have a separate SEQR review where the Common Council will be the lead agency. Chris stated that there were some questions proposed about whether this project is considered spot zoning. Chris explained that it wasn't especially because the parcel is split by two zones. Chris went on to explain that he consulted with Nadine, and she concurred that typically spot zoning occurs when you have an R-1 zone and you try to make your parcel in the middle of that zone manufacturing. There are other criteria and considerations, but in this particular case, part of the parcel is in an agricultural zone, and the Zoning Amendment would make the entire parcel under one zone.

239 Review- Comments from Madison County were received and returned with the following comments:

“Based on the subdivision plan and the Agricultural zoning change, the road frontage and minimum lot size are nonconforming. Based on the application, it is hard to understand what makes this non-conforming subdivision unique and should be granted approval.

The zoning change of the property from manufacturing-industrial to agriculture is justifiable. However, changing the zoning should not allow for the creation of a non-conforming lot/Subdivision.

The applicant is also applying for a road frontage area variance. NY State has strict area variance criteria, and the applicant must show hardship to obtain this special permit. The applicant must show that the benefits from receiving the variance will outweigh any burden to the health, safety, and welfare of the community. The factors to make this decision are as follows:

- 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;
- 2.) Whether 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;
- 3.) Whether the requested area variance is substantial;
- 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 an alleged difficulty is self-created.

Lastly, if the City is noticing that requests for substandard lots are becoming more common, then perhaps a thorough reevaluation of the City's zoning code could be beneficial.”

RESOLVED, that the Planning Commission be declared Lead Agency and classifies the action as Unlisted.

Moved by Pat Thorpe

Seconded by Perry Tooker

Ayes: 7

Nays: 0

MOTION CARRIED

The PCZBA discussed Part I and completed Part 2 of the Short EAF, and made a determination that there are no adverse effects associated with this project.

RESOLVED, that the PCZBA issues a Negative Declaration under SEQRA.

Moved by Pat Thorpe

Seconded by Barbara Henderson

Ayes: 7

Nays: 0

Motion Carried

Motion to Open the Public Hearing at 6:14

Moved by Pat Thorpe

Seconded by Randy Bonville

Ayes: 7

Nays: 0

Motion Carried

There was a discussion about moving the lot line to accommodate the frontage and lot size. Alternatives to moving the frontage line west, and giving area behind George Clarks line and the portion across the street to avoid needing a variance.

Chris explained that any amendments to the subdivision plat would require another meeting to review and approve the amended plat.

The applicant explained that the attempt was to avoid creating a non-conforming lot with the original parcel. There was discussion that it is mathematically possible to make both lots compliant, without needing a variance, but it would cause boundary concerns.

The applicant proposed moving the line to give the new lot more frontage while still retaining his driveway. There was a brief discussion about moving the line over the driveway, but it would require an easement for the driveway. It was determined that easements were not the way to go. The applicant wished to prevent making an unusual lot. The applicant explained there are lots nearby that are not compliant frontages. He noted examples across the street. Mr. Clark further explained that he does not perceive a factory going nearby in the future. The applicant went on to acknowledge that it is a self-created difficulty and that he is willing to meet in the middle.

Fred asked the Board for their thoughts. Chris reiterated that it would require an additional meeting and this meeting may be considered more of a sketch plat review. There was a discussion about if anything could be started without a permit, and the applicant responded no. Chris expanded saying that a permit cannot be issued without the area variances, subdivision, and zoning amendment.

Clarification about the zone change, Chris stated that the change from M-I to Agricultural was done to prevent spot zoning. Perry asked if the proposed subdivision is the 1st attempt. The applicant responded that there were one or two other drafts to ensure the house would be in the center of the plat. George Clark went on to convey the urgency by saying that he was trying to lay the block in May to get it done before the cold. He was working to get final approval at the next Common Council meeting.

There was a discussion about the septic systems and the soil suitability and if there was room. George Clark explained that there was room and why. The applicant's son explained that long-term, their neighbors are relatives and that they don't foresee any issues.

There was a discussion on the process forward. It was asked if the only way forward was to get a new survey of the proposed adjustments. Todd and Fred explained that the only way to expedite the process was to approve the proposed plat as is. The applicant addressed the Board, stating that he and his son have donated their time to the community. Fred explained that it had nothing to do with him (the applicant) but was required for everyone, legally. Fred explained there is an issue with the zoning of the land. Barbara commented that it is why the City is redoing the comprehensive plan.

Kipp described the 239 response and it was his feeling that there is no risk to the health, safety, and welfare of the community, that it is subdivided between the same family and there is an upside to the tax base with a new house in the community. The benefits outweigh the cost, and it could clear the area variance criteria except for the self-created difficulty. There was a discussion about how self-created difficulty is usually the one that is the issue, but it does not cause a denial.

Chris stated the 239 Review comments may have been misleading. The area variance criteria are not strict but more of a balancing test and it was sort of portrayed to be as strict as a use variance.

There was a discussion between Board members on how to move forward. Todd stated that they move forward with the proposal and if it doesn't pass then the applicant will need to readjust.

Motion to Close the Public Hearing at 6:30

Moved by Todd Schaal

Seconded by Pat Thorpe

Ayes: 7

Nays: 0

Motion Carried

Chris went through the five criteria for an area variance for 50' of Frontage, 15,984 sq.ft. of lot size to allow for the construction of a one-family dwelling located at 1445 W. Elm Street, Tax Map Number 29.-2-41.1.

- 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 an area variance.

Moved by Kipp Hicks that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance because the neighbors are amenable to the request and there should be no negative consequences to granting the area variances.

Seconded by Pat Thorpe

Ayes: 7

Nays: 0

Motion Carried

- 2.) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.

Moved by Kipp Hicks that the applicant can't achieve the benefit by some other method by some method feasible for the applicant to pursue due to the differences in the size of the other lots and it is not feasible to look at other alternatives.

Seconded by Pat Thorpe

Ayes: 7

Nays: 0

Motion Carried

- 3.) Whether the requested area variance is substantial.

Moved by Kipp Hicks that the requested area variance is not substantial because many lots in the inner district are much smaller and the examples the applicant used in the public hearing that are across the street.

Seconded by Randy Bonville

Ayes: 7

Nays: 0

Motion Carried

- 4.) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Moved by Todd Schaal that the proposed variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or district because people cannot see lot lines and it won't impact the neighborhood.

Seconded by Kipp Hicks

Ayes: 7

Nays: 0

Motion Carried

- 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 the area variance.

Moved by Barbara Henderson that the difficulty was self-created, but it is relevant, and it does not necessarily preclude because it won't have an adverse impact on the physical or environmental conditions.

Seconded by Randy Bonville

Ayes: 7

Nays: 0

Motion Carried

RESOLVED, that the Area Variances for 50' of Frontage, 15,984 sq.ft. of lot size be approved pursuant to Section 190-44, Article B, 2b of the Zoning Ordinance of the City of Oneida.

Moved by Randy Bonville

Seconded by Perry Tooker

Ayes: 7

Nays: 0

MOTION CARRIED

RESOLVED, that the PCZBA grants Sketch Plat Approval, waives Preliminary Plat Approval, and accepts the Final Plat, thereby granting the 2-lot minor subdivision located at 1445 W. Elm Street, Tax Map Number 29.-2-41.1, zoned A and M-I, by George Clark, file# 2023-006/7 be approved with the following conditions:

- 1.) The applicant will obtain all required permits and approvals, including a building permit;
- 2.) The approved map must be filed with Madison County within 62 days of approval by the City of Oneida Planning Commission Zoning Board of Appeals.

Moved by Randy Bonville
Seconded by Perry Tooker

Ayes: 7
Nays: 0

Motion Carried

Item #2- Recommendation for Zoning Ordinance Amendment to allow for the construction of a one-family dwelling located at 1445 W. Elm Street, Tax Map Number 29.-2-41.1, zoned A and M-I, by George Clark, file# 2023-005.

The Applicant was in attendance.

Fred stated the Common Council has been presented the application for a Zoning Amendment and they are only looking for a recommendation. Chris expanded on the statement requesting that the recommendation also include a reason why.

There was a discussion about the uses surrounding the property being residential and that the zone change was recommended by the County.

RESOLVED, that the PCZBA sends a positive recommendation to the PCZBA for the Zoning Amendment to change a portion of the parcel located at 1445 W. Elm Street, Tax Map Number 29.-2-41.1, zoned A and M-I, by George Clark, file# 2023-005 because the neighborhood character is consistent, and the Zone change was recommended by the County.

Moved by Pat Thorpe
Seconded by Todd Schaal

Ayes: 7
Nays: 0

Motion Carried

Item #3- Sketch Plat Approval, Preliminary Plat Waiver, and Final Plat Approval for a 2-lot minor subdivision at Peterboro/Middle Road, SBL# 55.-1-20.111, zoned A, by Robert Renner- file #2023-012.

The Applicant was in attendance. Perry before the meeting stated to Fred and Chris that he will recuse himself from the item as the contracted surveyor.

Fred asked if it is a reality subdivision. Chris responded that it was subdivided before obviously, but it was not a reality subdivision. Perry stated the last time was in 2011.

Todd asked if the road frontage had to be contiguous. There was a discussion about the access off of Middle Road and if there was enough frontage. There are 234 feet of frontage. Chris explained that it would just need to be on the same side of the road.

Fred asked if they could do this again. Chris said there is a time frame, and that splitting it again and that the applicant would have to be compliant with the reality subdivision law.

RESOLVED, that the Planning Commission be declared Lead Agency and classifies the action as Unlisted.

Moved by Pat Thorpe

Seconded by Barbara Henderson

Ayes: 6

Nays: 0

Recused: 1 Perry Tooker

MOTION CARRIED

The PCZBA discussed Part 1 and completed Part 2 of the Short EAF, and made a determination that there are no adverse effects associated with this project.

RESOLVED, that the PCZBA issues a Negative Declaration under SEQRA.

There was a brief discussion about the proximity to Nation property. It was determined that it was in proximity.

Moved by Pat Thorpe

Seconded by Randy Bonville

Ayes: 6

Nays: 0

Recused: 1 Perry Tooker

MOTION CARRIED

Motion to Open the Public Hearing at 6:50

Moved by Pat Thorpe

Seconded by Randy Bonville

Ayes: 6

Nays: 0

Recused: 1 Perry Tooker

MOTION CARRIED

No comment

Motion to Close the Public Hearing at 6:51

Moved by Kipp Hicks

Seconded by Barbara Henderson

Ayes: 6

Nays: 0

Recused: 1 Perry Tooker

MOTION CARRIED

RESOLVED, that the PCZBA grants Sketch Plat Approval, waives Preliminary Plat Approval, and accepts the Final Plat, thereby granting the 2-lot minor subdivision at Peterboro/Middle Road, SBL# 55.-1-20.111, zoned A, by Robert Renner- file #2023-012 with the following conditions:

1. The approved map must be filed with Madison County within 62 days of approval by the City of Oneida Planning Commission Zoning Board of Appeals.

Moved by Pat Thorpe

Seconded by Barbara Henderson

Ayes: 6

Nays: 0

Recused: 1 Perry Tooker

MOTION CARRIED

Item #4- Area Variance for an additional accessory structure located at 610 W. Elm Street, Tax Map Number 30.61-1-8.1, by Jim Chamberlain, file# 2023-011.

The applicant was in attendance.

There was a brief conversation regarding certified mailings for neighbor notices. Applicants should send out certified mailings as it presents proof that it was sent out because there is an official stamp from the post office.

There was a brief discussion about garages being treated as an accessory structure, requiring the additional structure variance.

There was a discussion about the definition of an accessory structure. Chris explained that the size thresholds applied to building permits. Chris then read the definition of an accessory structure per section 190 of the zoning law. The only size specified in the definition relates to height, and the accessory structure is up to the Code Enforcement Officer's interpretation.

239 Review- Not required.

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RESOLVED, that the Planning Commission be declared Lead Agency and classifies the action as Type II requiring no further action be taken.

Moved by Kipp Hicks
Seconded by Perry Tooker

Ayes: 7
Nays: 0

MOTION CARRIED

Motion to Open the Public Hearing at 6:56

Moved by Pat Thorpe
Seconded by Barbara Henderson

Ayes: 7
Nays: 0

MOTION CARRIED

No comment

Motion to Close the Public Hearing at 6:57

Moved by Pat Thorpe
Seconded by Barbara Henderson

Ayes: 7
Nays: 0

MOTION CARRIED

RESOLVED, that the Area Variances for an additional accessory structure located at 610 W. Elm Street, Tax Map Number 30.61-1-8.1, by Jim Chamberlain, file# 2023-011 with the following conditions:

1. The applicant will obtain all required permits and approvals, including building and sign permits;

Moved by Pat Thorpe
Seconded by Randy Bonville

Ayes: 7
Nays: 0

MOTION CARRIED

Chris interjected and there was an error in the agenda and the area variance criteria needed to be considered.

Chris went through the five criteria for an additional accessory structure located at 610 W. Elm Street, Tax Map Number 30.61-1-8.1, by Jim Chamberlain, file# 2023-011.

- 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 an area variance.

Moved by Todd Schaal that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance because of the size of the structure and the distance from neighbors.

Seconded by Kipp Hicks

Ayes: 7

Nays: 0

Motion Carried

- 2.) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.

Moved by Pat Thorpe that the applicant can achieve the benefit by some other method by some method feasible for the applicant to pursue because the location does not preclude the approval.

Seconded by Randy Bonville

Ayes: 7

Nays: 0

Motion Carried

- 3.) Whether the requested area variance is substantial.

Moved by Kipp Hicks that the requested area variance is not substantial because it is a small structure 8 x 10 on a large lot in a wooded area.

Seconded by Barbara Henderson

Ayes: 7

Nays: 0

Motion Carried

- 4.) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Moved by Todd Schaal that the proposed variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or district because it won't be seen.

Seconded by Pat Thorpe

Ayes: 7

Nays: 0

Motion Carried

- 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 the area variance.

Moved by Todd Schaal that the difficulty was self-created, but it is relevant, and it does not necessarily preclude because he could add onto a different structure, but the location is closer to the operation.

Seconded by Kipp Hicks

Ayes: 7

Nays: 0

Motion Carried

RESOLVED, that the Area Variances for the additional structure be approved pursuant to Section 190-44, Article B, 2b of the Zoning Ordinance of the City of Oneida.

Moved by Randy Bonville

Seconded by Barbara Henderson

Ayes: 7

Nays: 0

MOTION CARRIED

Item #5- Updates on Fees, Public Hearings, and the Location of the June Meeting

Chris explained the fee schedule was approved.

Chris explained that he's had conversations with Nadine, and it is recommended that public hearings take at least two meetings. Getting everything done in one meeting does expedite the process, but it does leave the City open to an Article 78.

There was a discussion about posting legal notices and if they happen. Chris explains that he does get them posted. He then elaborated on the reason behind having multiple meetings that doing SEQR, public hearings, and decisions is a lot for one meeting.

There was further discussion that a compromise would be to make it so FEAF projects would require two meetings, and SEAF projects, or projects in existing buildings would only require one meeting. Fred stated that the next meeting we will have a crowd of people attending and they would not be happy if it is scheduled for the next meeting. Chris' response was to make this policy take effect starting July 1st.

Chris made an example of the solar project. He then recommended that the Solar project would put a notice out starting tomorrow, and then a second closer to the public hearing. The Board agreed that would work.

Chris posed a question related to the idea of having area variances require a survey. There was a discussion about the cost and how a simple survey could cost residents \$800. Chris explained that area variances should not be as easy. It especially could be important for swimming pools, and accessory structures that are close to each other. Chris went further on to explain the potential for liability, but the most important thing is granting the minimum variance necessary. One idea discussed was allowing applicants to measure from existing stakes, but there was a concern that the stakes could be moved.

The Board went on to discuss that certain variances would not need a survey, for example additional structures. It was agreed that surveys can be very expensive. Perry stated that a simple plot plan would not be as expensive. Perry offered to draft some of his thoughts, and Chris noted that it would be appreciated.

The Board went on to discuss that there should be criteria set up so that it is not left up to interpretation. There was a discussion that municipalities do require a survey. Alternatives were discussed where criteria could be set by zone. There was a concern expressed that the prices have already been increased, and now people will be required to do a survey. Perry agreed that more information is better but understood the cost. Fred stated that he doesn't care if he sees a map that is stamped showing the line. He is approving the proposal before him. Todd posited that it may be more of a Code issue. Perry conveyed an example that some Code Enforcement Officers want to see stakes in the ground.

Chris presented an alternative that some municipalities make a condition of the approval be an as-built-survey, but the concern is that people will have the structure built, and depending on how or where it is built, could result in an additional variance.

Kipp made a statement about liability insurance, and Chris piggybacked that he believes that the Codes Department requires it. Chris further explained that the State is being stricter with drawing details.

The last item discussed was that the next meeting will be held in the Activities room in the basement.

RESOLVED, that there being no further business to be brought before the PCZBA, the meeting is hereby adjourned.

Moved by Todd Schaal
Seconded by Kipp Hicks

Ayes: 7
Nays: 0

MOTION CARRIED

Meeting adjourned at 7:18 p.m.