



Town of Olive Zoning Board of Appeals

P.O. BOX 513, Shokan, New York 12481

Frederick Perry
Chairman

Members
Sandy Friedel
Brian O'Rourke
Chet Scofield
Gemma Young

MINUTES

February 1, 2024

1. Opening:

The Town of Olive Zoning Board of Appeals met on Thursday, February 1, 2024 to hold a regular meeting and Public Hearings for Jam In Joint Ventures Inc. Chairman Perry brought the meeting to order at 7:00 p.m., at which time the Chairman led the Pledge of Allegiance to the flag.

2. Record of Attendance:

Fred Perry
Chet Scofield
Brian O'Rourke
Gemma Young

Absent
Sandy Friedel

3. Election of Officers:

Chairman Perry reported that the Town Board has named him as Chairman of the Zoning Board of Appeals, he made a motion to keep Chet Scofield as Vice-Chairman and Brian O'Rourke as secretary, Gemma Young seconded the motion. With a unanimous vote the elected officers are:

Fred Perry – Chairman
Chet Scofield – Vice-Chairman
Brian O'Rourke – Secretary

4. Approval of Minutes:

On a Scofield/Perry motion the Board dispensed the reading of the November 2, 2023 minutes, and accepted them as written.

5. Public Hearing:

5.1 Application 24-01 of Jam and Joint Ventures Inc., represented by Matthew D'Altorio, for property located at 5147 Route 213, Olivebridge, NY 12461. The hearing for Jam In Joint Ventures opened at 7:05 p.m. at which time Chairman Perry reviewed the rules for conducting a public hearing. The

secretary read the legal notice appearing in the January 25, 2024 issue of the Daily Freeman announcing the applicants' appeal, "...for variance of Article IV, Section 155-16/Article X, Section 155:A1(5) of the zoning ordinance to change the side yard setback from 20' to 0' to move the lot line to the edge of a garage to allow for a lot line adjustment to be presented to the Town of Olive Planning Board."

Present at the meeting are Matthew D'Altorio and James Rueda, the business partners known as Jam In Joint Ventures Inc.. Mr. D'Altorio explained that they started the company about 20 years ago to purchase some properties in the area. He stated that he has owned a house in Willow for about 25 years and Mr. Rueda owns a house in Lake Hill. They created the company in order to purchase some commercial properties locally. They have sold a property they owned in Glasco and they are looking to sell the property in Olivebridge. Matthew D'Altorio stated that they purchased the property in January 2003 and the main lessee is the US Post Office. He explained that they owned it for about 17-18 years before they discovered that the garage that they own as part of the property is over the border of their neighbor, Debra Romano, and they are looking to rectify the problem. Mr. D'Altorio said that it began when a tree came down and he was talking with Ms. Romano about who would be responsible and she remarked that the tree is on her property, as well as a portion of the garage. Matthew D'Altorio said that this was the first he had heard of this situation as they did not have a survey done when they bought the property 21 years ago. He remarked that in the contract of sale when then bought the property there was a stipulation that all buildings were in the boundaries of the property.

Brian O'Rourke asked if the garage was on the property when they bought it. Mr. D'Altorio said that it was, the house and garage were built around 1920. He is not sure when the encroachment happened. They are now looking to agree with Ms. Romano to transfer a minimum amount of property so that the lot line is equal to the garage, as well as a 4' wide section that goes to the street that has an asphalt driveway that is also over the lot line. Mr. D'Altorio said that they have been talking to Debra Romano to rectify the situation so there is no problem when they sell the property as a new buyer will not want to have this encroachment.

Chairman Perry asked Mr. D'Altorio what the garage is currently being used for, he responded that it is being rented by Ms. Romano's husband, Antoine Hepkins. Brian O'Rourke asked how much of the garage is over on the neighbor's property. Matthew D'Altorio said it is 4 ¼ feet. Gemma Young asked what the reason is for asking for the lot line to follow the edge of the building, she wondered if it was the desire of the applicants, Ms. Romano, or a compromise. Mr. D'Altorio said it is their desire because the property is encumbered and they can't sell it free and clear. Ms. Young clarified that she is asking why the lot line isn't allowing for a five-foot setback. He doesn't want to speak for Ms. Romano but he believes that she doesn't want to give up any more property than she has to and he doesn't feel that any more property is needed on that side of the lot.

Gemma Young asked who owns the pallet fence that is noted on the sketch. Mr. D'Altorio said that the pallet fence was put up by Ms. Romano on the asphalt driveway. He said that the pallets are just temporary.

Chairman Perry asked about property in the rear of the buildings. Matthew D'Altorio said that they put the pink line on the drawing to show the setback line, the property on the other side of the line is their property. Brian O'Rourke asked if there has been a conversation about compensation, Mr. D'Altorio said that they have, it wasn't determined that Ms. Romano has agreed to the proposal. Debra Romano said that part of her decision is based on whether the Zoning Board grants the request. Gemma Young asked if there has been any discussion what would happen if the ZBA doesn't approve the zero-foot setback. Chairman Perry asked if there had been any consideration about trading equal amounts of property, along with the monetary amount.

Matthew D'Altorio was asked if the garage could be moved. He didn't feel it could be moved without great expense. It is on a stone foundation; it was constructed over one hundred years ago.

Mr. D'Altorio was asked if the agreement with Ms. Romano he is referring to is in writing. He said it isn't, there have only been emails back and forth. He said that the amount of land in question is .012-acres, approximately 4 ¼' by 22'.

Chairman Perry said that the Zoning Board of Appeals has to consider five elements when considering an area variance. One of the elements is if it will have a great impact on the neighbor, which this obviously does as there will be no buffer. Gemma Young remarked to Mr. D'Altorio that the reason you are looking for the setback is so you can sell your property unencumbered, but you also have to consider if Debra Romano wants to sell her property will a buyer want to have a zero-foot setback. It creates a problem if the side of the building needs to be painted, gutters need to be cleared, or drainage needed than the person would be trespassing. Ms. Young said that it is problematic for both property owners.

Chairman Perry pointed out that another element to consider is if the hardship is self-created, and since the property was bought without being surveyed it is self-created. Matthew D'Altorio as asked if he had a title search done, he said that he did and there wasn't anything on it about the buildings. Debra Romano said that it had to be on the title search because she has a title report from 1980 and it is noted on her report. Chairman Perry feels that the ZBA can't make a decision like this without both property owners coming to some type of agreement, the board can't make a property owner give up a portion of their property. Chet Scofield feels that there has to be an agreement in place before the ZBA can consider anything.

Gemma Young said that the elements for considering an area variance are if there are other options, is it a self-created hardship, is there going to be damage to the physical or environmental nature of the neighborhood, and whether the request is substantial. Gemma Young said that from a practical standpoint zero is substantial. She understands that currently there is no setback but that doesn't make it right. She said that she would be very uncomfortable approving a zero-foot setback variance because it creates a potential conflict point for any owners. Chet Scofield said that it could be precedent setting. Brian O'Rourke said that the request doesn't concern him a great deal as long as there is language in an approval that states it is for this specific situation as it has been a massive problem for decades. It would mean a minimum transfer of property. He said it would be different if there was new construction looking for a zero-foot setback.

Chairman Perry acknowledged Debra Romano. Ms. Romano said that she has a deed dating back to 1980 and it talks about the garage and also a shed that was over on her property. The shed was removed. Debra Romano explained that the property was owned by her grandfather prior to her and the title report that was done in December 1993 states that the garage encroaches the Romano property.

Debra Romano explained that she did have a lawyer draw up a License for Use agreement because it is very common and is a peaceful and reasonable way to settle a property line dispute. The agreement states that Jam In Joint Ventures acknowledges that Debra Romano owns the 4 ¼' strip and will let you use it as you have forever. She said that the agreement was rejected by Jam In Joint and that is when her pallet fence was put up because there is also such a thing when a person discovers a lot line problem and nothing is done about it when it is discovered, it's called adverse possession. Ms. Romano explained that the barrier also went up to protect themselves because they have people trespassing coming over to her property and feeding her animals unhealthy items. She has also had people tell her to "f" themselves when she has asked them to leave her property. Ms. Romano said the problem has gotten worse over the last three years so the barrier went up with No Trespassing signs in order to identify their property. She

explained that if Jam In Joint had approved the License for Use they would have put a fence up in line with the garage. Ms. Romano said that Jam In Joint rejected the agreement because at the end of the License it says the encroachment must be removed. She said that she would never ask for the encroachment to be removed, they rent the garage. She feels a new owner would still object with the property line right along the garage because they wouldn't be able to paint the side of the garage or fix a window without trespassing on the property.

Debra Romano said that when it was discussed about moving the line further away from the garage there is a line of white birch trees and out by the road there is a 100-year-old hickory nut tree. She remarked that the federal government values a 50-year-old birch tree at \$57,151.00 and there happens to be one of those 50-year-old birch trees right up against the garage and she doesn't want to lose her trees. Debra Romano said that to give a bigger setback to the garage would mean she would lose her trees and she doesn't want to give them up, she has lived on the property since 1993 and they are her sanctuary. She said that she would also lose a make-shift road that they use to take hay back to the barn.

Brian O'Rourke remarked about the requested jog around the garage, Debra Romano noted that the requested zero-foot setback affects the side and part of the rear of the garage.

Matthew D'Altorio said that another reason they rejected the Use Agreement was because the wording said that it was terminable when they sell the property and revocable at will. Mr. D'Altorio and James Rueda said that the agreement doesn't solve the problem. Brian O'Rourke asked if the problem would be solved if that wording was removed or changed to irrevocable. They said it would, Debra Romano said she wouldn't want irrevocable but would agree to renewable.

The applicants know it doesn't change the issue but over the years they have replaced the roof and painted the garage, at the time they didn't know there was an issue.

Ms. Romano stated that if there is a zero-foot setback given, she plans on putting up a privacy fence to the edge of the garage which will hinder access between the properties and access to maintaining that side of the building.

Present in the audience is Allison Irwin, she stated that she had written a letter regarding this application. Janelle Perry acknowledged receipt of the letter. Ms. Allison remarked that the applicants already knew about the encroachment before they paved the driveway. She also commented that she has been attending the Planning Board meetings and they have had old dilapidated sheds moved or torn down before approving a subdivision. She is baffled by this request for a zero-foot setback and the fact that the driveway was paved after knowing it was on the neighbor's property. Mr. D'Altorio said that the US Post Office wanted the driveway repaired as it was a hazard to their patrons and when it was contracted to be done the contractor paved the existing driveway. The owners of Jam In Joint Inc. acknowledged that they knew part of the driveway was on Ms. Romano's property. Ms. Romano said that she tried to have it stopped. Brian O'Rourke asked when the paving was done, Mr. D'Altorio said it was done this past summer. Mr. Rueda said that the US Post Office wanted the repairs to be done and it put them in a very awkward position.

Chairman Perry told the applicants that the ZBA is not prepared to make a decision until Jam In Joint Inc. and the neighbor, Debra Romano have come to some type of agreement. The ZBA can then consider the proposal. Debra Romano said that she will not be spending any more money on lawyers. The applicants were asked if they looked into the cost of moving the building. Mr. D'Altorio said that they have not, Debra Romano said that she has and the cost would be approximately \$76,000. Matthew

D'Altorio said that they wouldn't be able to move it closer to the house because there is a driveway that runs around the back to the loading dock. Ms. Romano again suggested that her agreement would be the easiest way to resolve the issue. Mr. D'Altorio said that he feels it would be too difficult to sell with the uncertainty that it would be renewed in the name of the new owners. Gemma Young said that the zero-foot setback would also be problematic for a potential buyer.

Debra Romano said that it has been known about the encroachment for years. She said that her grandfather owned the property and in 2011 it was transferred to her with the title report so she was surprised that Mr. D'Altorio and Mr. Rueda wasn't aware of it.

There was a brief discussion regarding the process that Jam In Joint followed when purchasing the house through a local bank.

Gemma Young asked Ms. Romano if she would prefer to own the trees. She responded that she would. Ms. Young noted the hickory and birch trees noted on the property. Ms. Romano said that her main concern is to keep the tree line in particular the birch tree that sits right next to the garage. Debra Romano reiterated that the US Forestry value of that tree is \$57,000. Present in the audience is Dona Crawford, a retired educator for Cornell University, and she explained that what Ms. Romano has explained about the trees is very true. She said that birch trees are native to this area and they have been affected by a pest that attacks the trees and you don't see very many old gorgeous birch trees like this particular tree. Ms. Crawford remarked that this old tree has survived the bronze birch borer and that is why it is valued that high.

Matthew D'Altorio asked if it would help if there was a maintenance agreement allowing the side of the building to be maintained. Gemma Young asked Ms. Romano if she would feel comfortable answering the question. Debra Romano said that she would have to think about it. Brian O'Rourke asked Debra Romano if she would consider changing the revocable wording so it would be settled for the future. Ms. Romano said that the agreement is written to the owner so a new agreement would need to be established with each new owner, which she is willing to do. Brian O'Rourke asked Ms. Romano to look into this. There was a brief discussion regarding the guarantee that it would transfer to the next owner.

Chairman Perry feels that the Zoning Board of Appeals will need to table the decision and asked the applicants and Ms. Romano to work out something. Matthew D'Altorio said that the realtor says it needs to be resolved because it is commercial property and nobody will want to purchase it with this encroachment.

Janelle Perry read the letters that the Zoning Board of Appeals has received from the following concerned neighbors. Merle Borenstein, 5092 State Route 213, Olivebridge, Dona Crawford, 49 Weber Lane, Olivebridge, Allison Irwin, Shokan Park Road, Shokan, and Shirley Golgoski.

Matthew D'Altorio said that he wouldn't want to see a zero-foot setback but it is already there. Brian O'Rourke said that he wouldn't approve a zero-foot setback on new construction but this is a 100-year old problem. Mr. D'Altorio said that they are looking to sell it unencumbered. Debra Romano asked the applicants if they have lost a buyer because of this issue. Mr. D'Altorio said that they haven't, but if they had known this 22 years ago they wouldn't have bought the building.

With no further discussion to be held on the application at this time the public hearing was closed at 8:23 p.m. on a Perry/Scotfield motion.

6. Discussion:

Chairman Perry asked the members their thoughts. Gemma Young said that she is not comfortable with a zero-foot setback as a general rule. She isn't sure what the legalities are for setting a precedent. She understands there is a problem and you want to settle the problem and the most pragmatic way to do that is to ensure there are proper setbacks around buildings because you are opening up a can of worms for disputes, conflicts, trespassing, and issues. She feels that if it wasn't for the tree the situation would be pretty straight forward, and maybe that should be negotiated.

Brian O'Rourke disagrees, he feels that this is an exceptional case and a zero-foot setback would protect the tree. He said that he is sympathetic about the trees and he is hoping that the two parties can come to an agreement. Brian O'Rourke asked Ms. Romano to look into the wording and hopefully it can be written to be permanent. He feels that the current owners need to be protected and any future owners need to be protected.

Chet Scofield said that the only way he would be comfortable granting a zero-foot setback is if there is a permanent 5' maintenance agreement in place to maintain the building.

Chairman Perry recommends that the Zoning Board of Appeals table their decision. He would like to see both parties work something out. He doesn't feel it would be right to tell anyone that they can't sell their property.

Matthew D'Altorio was asked about the location of some of the parking signs, they appear to be on Debra Romano's property even after the lot line adjustment. Mr. D'Altorio said that once the property line was determined they would be able to relocate the signs and would also put up some blocks that will stop cars from leaving the pavement. Matthew D'Altorio showed Debra Romano the survey map pointing out the proposed lot line, trees, and signs.

Brian O'Rourke remarked that he feels tearing down the building would be detrimental to the tree, he's afraid it would kill the tree. Dona Crawford said that the age of the tree would actually help as the root system is different in mature trees, there isn't a tap root. She said it would endanger the tree but probably not kill it.

The applicants know what they need to do before they can come back to the Zoning Board of Appeals for a decision on this application.

7. Adjournment:

With no further business to discuss, the meeting was adjourned at 8:40 p.m. on a Perry/O'Rourke motion.

8. Next Meeting:

The next meeting of the Board will be held at 7:00 p.m. on Thursday, March 7, 2024 should there be business to discuss.