

ZONING BOARD OF APPEALS
TOWN OF LLOYD
MINUTES
Thursday, October 13, 2022

CALL TO ORDER TIME: 7:00 PM

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS: GENERAL, NO SMOKING, LOCATION OF FIRE EXITS, ROOM CAPACITY IS 49, PURSUANT TO NYS FIRE SAFETY REGULATIONS. PLEASE TURN OFF ALL CELL PHONES.

Attendance: Board members: John Litts, Paul Gargiulo, Bill Brown, Russ Gilmore, Jessica Van-Houten; Board Staff: Dave Barton, Paul Van Cott (via Zoom), and Sarah Van Nostrand

Absent: Board Members: Shawn Zerafa

Old Business:

DePuy, Trevor: Area Variance: 4 Eagle Court: SBL #86.4-3-9.1

Applicant Trevor DePuy is the owner of property located at 4 Eagle Court with a SBL of 86.4-3-9.100. The parcel is located on the west side of Falcon Drive and is in the A zoning district. At this time, Mr. DePuy seeks to annex a twenty-five-foot-wide parcel of land from the adjoining Klemm property and create a two-lot subdivision, each with fifty feet of road frontage and twenty-five-foot-wide access parcels. Eagle Court will still only service two individual lots, and the Klemm driveway will exit directly onto Falcon Drive. To accomplish the subdivision, the applicant is seeking an area variance from the Zoning Board of Appeals for relief from Town Code Section 100-14 (4), "Flag Lots-For subdivision of four or fewer lots, only one flag lot shall be permitted."

Review Status: Public hearing closed on 9/8/22

John said that the board had asked for a final statement to make Eagle Court a town road, was submitted to the board. The cost of the estimate is \$222,100.00. He asked how long the road was?

Dave read the numbers off the map.

John said is it about 445 feet long?

Trevor DePuy (applicant) replied it is about 500 feet long.

John said that he read the balancing test that the board did last time and it seemed that there was more information that was needed.

Paul G. said that the way he looked at it was that the only way they could prove that there was no

feasible alternative was to get a final statement. As he already has permission to access his lot now. He wanted to know since the town had given the owner's permission to create a road. He wanted to know how much it would be for the road and then they wouldn't have to go the ZBA for relief.

John asked so you wanted to know if there was a feasible alternative to the variance?

Paul G. replied yes. Before he could make a decision, he needed to know how much it would cost to put the road in. If the lots cost 60,000 and you take that off the cost of the road you get about 120,000 just to gain the extra lot.

John said if he takes his 10-acre parcel and does put the road in, it allows him to do a 5-lot subdivision if he wishes.

John asked when you bought the lot you bought it knowing that to gain a lot you would need to build a town road or go for a variance to gain a lot?

Trevor replied yes.

John asked if the applicant is still willing to waive the 45-day time limit and also allow the board to accept more public comments?

Trevor replied that he was okay with it.

John asked Paul V. if that was good with that?

Paul V. replied yes, Patti Brooks (applicant's agent) was at the September meeting and indicated that they would waive the time limit for a decision. The board if it chooses to could wait until November to make a final decision. The board did go through the balancing test, but could do so again if you choose to. If the board wanted to make a decision tonight, they could and could have a resolution for the chair to sign after the meeting based on the board's decision.

John asked Paul V. if the board could let someone speak on the project?

Paul V. replied that it is up to the board to allow public comment at any time.

James Roosa (14 Falcon Drive) said that when he bought his property from the original owners (Pleasant Ridge) they had already combined that to one parcel. He bought his property knowing that he would never have a neighbor that close. He has lived there 2 years and now he hears that there will be a subdivision directly behind him. He doesn't feel that it is fair or right to him that after living there 2 years and knowing that the subdivision was already put back into one lot, that a 2nd house could be placed in his backyard. He said that the 25-acres that was originally slated to be 10 2.5-acre parcels was not approved by the town and they put it back into two lots.

Jessica asked where about his house was on the map?

Dave pointed it out on the map.

James said that the house is on the back third of the property. He has a 2-acre field in the front and his house is built on a rock.

John asked Dave if the way the parcel is now if the road was constructed, then he would not need a variance from the board and you could put potentially 5-lots in?

Dave replied with Planning Board approval.

John said when you bought your property the parcel behind had potential to be 5-lots with a roadway.

James said that it was discounted by the town already at that time.

John said if the owner wants to put the money out to build a road, then they could legally make that 10-acre parcel into 5-building lots.

James said that the road was supposed to be put in and go around and come back out onto Station Road, but Pleasant Ridge got denied by the town because of water issues where that road was going to be.

John said that if the owner of the property wanted to spend the money to put the road they could. When your neighbor bought his property, he knew he could only put 1 house on it. Just like when you bought your house, you knew there was potential for 5 houses to go on that piece of property. He understands where he is coming from, but there is potential for houses to be built after you buy yours.

James said that back in 2019 when he was looking to buy the parcels were put in to 2 lots and he had no reason to believe that they would divide them again otherwise he would have never bought his parcel. He said it went from 4-lots down to 1 and when he bought it, he thought it would stay 1-lot.

John said that regardless of what this board does as right now the applicant is in front of the board for a variance. Without a variance they could put the houses in right now, if they build the road.

Paul G. said that when the bank consolidated the parcels it was due to the fact that they didn't want to pay the excess taxes on those parcels.

James said that they combined them because the town didn't approve them to be individual lots.

Paul G. replied that the whole project was approved.

Paul Ackerman (Attorney for Roosa) said that the board shouldn't be calling it a right that the property owner could now subdivide the property into 5-lots. There is a process, where the Planning Board would look at the project and decide, it would also go through a SEQRA process. The parcel is currently a flag lot and there is a house already on the combined lot. At the last meeting the board did approve a flag lot and consistent with the Town Code, that a note would be included that would say that the flag lot would not be further subdivided. He is wondering why in this case that same provision of not further subdividing a flag lot is not be considered.

Dave said that he thinks Mr. Ackerman is saying that if the Planning Board was reviewing this instead of the Zoning Board that they would include a note, that would state no further subdivision of the flag lot will occur. Mr. Ackerman is suggesting if that is a matter of law in our code, this board should take that into consideration while reviewing this additional flag lot.

Mr. Ackerman thinks that it should be prohibited from further subdividing the flag lot that was created.

John asked if they have annexed the property or is it proposed?

Dave replied that the map on the screen is the proposed subdivision, which cannot proceed in the Planning Board due to the double flag lot issue.

John asked if the board wanted to go through the balancing test again.

Board has no problem with going through the balancing test again.

Balancing Test:

1. Will there be an undesirable change in the character of the neighborhood or a detriment to nearby properties?

John said that there will be.

Jessica said that there is at least one person affected.

John said that this is a flag lot and the board has never taken a flag lot and made it into two flag lots. He feels that it will be out of character and a detriment to the neighborhood.

Dave said that the board's duty is to look at possible alternatives, and he thinks the primary concern of the public is the proximity of the additional house that will be close to the backyard of the existing house. He is wondering if the applicant would be inclined to change the nature of that new lot, to increase it and move the house further into the property and away from the front. He said that the road got dissolved because the bank didn't want to pay for it and not due to the town. He said that if the configuration of the lot was changed some of this discussion would become moot.

Paul G. said that even if he moves the house right next to his brother's there would still be two flag lots. He feels that the two flag lots harm the character of the neighborhood.

Dave said that he was mentioning the suggestion as the board was in the impacts to the neighborhood.

John said that the board could minimize the impacts to the neighborhood by configuring it differently.

Jessica asked if the applicant has explored those options?

Trevor said that to build the road, it would be more of detriment to the neighborhood as he would

have to clear more trees to create the road. If the variance is granted it would have more of a natural feel. He has talked about with Patti about reconfiguring the lot, moving the house to the west, they could put a 50-foot buffer in. They are trying to keep the impacts minimal; he could just put the road in which would be more detrimental to the neighborhood.

Jessica asked what would the detriment to the neighborhood by putting the road in would it just be the cutting of the trees?

Trevor replied yes because it would be more open.

John said that it legal and it wouldn't be for this board it would be for the Planning Board.

Dave said that he likes the idea of moving the house, but the only issue would be where the septic is proposed there wouldn't be any trees there.

Trevor replied that they could move the house and septic system to the west.

Paul V. asked where the board stood with this question, as the project is proposed that the development on the lot would produce an undesirable change?

John replied he believes that the two flag lots would be the undesirable change.

Paul V. asked regardless of where they put the development it is an undesirable change in the character of the neighborhood and a detriment to nearby properties?

John replied right.

2. Whether the benefit sought by the applicant can be achieved in some other feasible method that does not require an area variance?

John said that there is an alternative, but it is expensive. If they build the road, it would allow the applicant to explore the possibility to have more than two building lots. He said that the feasibility of it comes into play. The road would allow them to explore 5-building lots or at least more than 2-building lots. The \$222,000 would be shared instead of in 2 building lots, would be shared between more than 2.

Paul V. said that their goal is 2 lots, so you have to think reasonableness with respect to the 2 lots and not to the potential that they could have 5 lots.

John asked so they cannot consider the potential return on that investment?

Paul V. replied the board is supposed to focus on the applicant's objectives and not something that is not proposed or sought by them. They are not seeking a 5-lot subdivision they are seeking a 2-lot subdivision. They need the variance or it would cost them \$222,000 otherwise for them to build the road to be able to gain subdivision approval for their 2-lot subdivision.

Trevor said that the town road proposal is only to the hammerhead turnaround. To gain more lots it would have to go all the way to the end and it would be substantially more.

Jessica asked if the purpose to have two lots there as the one lot is for your brother and you are not gaining anything except having him be able to have a house there?

Trevor said no financial gain.

Jessica asked so it's not for two lots, it's for two dwellings?

Trevor replied two lots for two dwellings as the bylaws say you can only have one dwelling per lot.

Jessica asked whether the application was just for two lots? No AD use?

Dave said that she means accessory dwelling units, which are smaller buildings. They are currently not allowed, except as an accessory apartment. The town is working on language for that.

Trevor said that he is not looking to develop further.

Jessica said that she wasn't sure if the purpose was to have two lots or if it was just to have two dwellings in one area.

Trevor said that it is to have two dwellings in one area and the only way to do that is to create 2 lots.

John said that there is no feasible alternative to the variance.
Board agrees.

3. Whether the requested area variance is substantial?

Paul V. said that this where the board should consider the fact that you already have one flag lot and the requested variance is for a second one.

John thinks that it is.
Board agrees that the variance is substantial.

4. Will the requested variance have adverse or impacts on physical or environmental conditions in the neighborhood or district?

Paul said that the board should focus on the creation of the second flag lot recognizing that any future development will be subject to the Planning Board's review and approval if the variance is granted. The Planning Board would look at the SEQRA impacts to the neighboring properties, the overall site plan and to figure out mitigation for any impacts that might occur.

John feels that there won't be a substantial impact.

Paul G. said that he thinks it is substantial because there is only one in the neighborhood now.

Russ said that currently the houses in the neighborhood are spread out. He feels that if the board grants the variance that this subdivision will start to create a crowding situation. Therefore, he feels it will have an impact on the neighborhood.

5. Whether the alleged difficulty is self-created?

Board agrees that it is a self-created hardship.

Paul V. said that typically what the board is looking for here with an area variance is whether there is some constraint of the land that makes the variance necessary that applicant would not have been able to do. What the state of the code was at the time the property was purchased, that is relevant to whether this is a self-created hardship or not.

John said that the applicant knew going in what they were up against. It is defiantly self-created and the zoning hasn't changed. He asked Paul to refresh the board on the balancing test with their comments.

Paul said for factor number one the board's consensus is the creation of the second flag lot would be out of character with the neighborhood and or a detriment to neighboring properties. With respect to alternatives the board's consensus is that there is no feasible alternative to the creation of the 2nd flag lot. The third factor the consensus of the board is that it would be a substantial variance if granted. The fourth factor, there would be environmental impacts from the creation of the second flag lot, specifically it would be out of character with the existing neighborhood and would result in a change by creating a crowding effect. Lastly, the variance is self-created because the property owner knew at the outset that an area would be required for the creation of the second lot. Taking those factors into consideration the balancing for the board would be whether the benefit of granting the variance which would allow for the creation of the 2nd lot and its development, subject to Planning Board review. Whether that benefit outweighs the detriment to the neighborhood.

John asked if the board had to do anything with the public hearing, since they took public comment at the meeting?

Paul V. replied that the board is good. The board is at a point where if the board wants to stay within the time periods for a decision, you would make a decision tonight and it can be followed up with documentation of that in a resolution. Or the applicant has allowed that they would extend the period by waiving the time frame for making a decision. The board could put it off until November and have a draft resolution in front of the board at the time.

John said that the board could get a consensus tonight, vote tonight and have a resolution next month. Normally the board has a draft resolution to vote on, but if they vote tonight and then draft it, they will still be on solid ground?

Paul V. replied that the board could make that decision and he can draft it from there.

John said given the balancing test, the board has 4-yeses and they are not normally comfortable with 1. He feels that the board would not be able to grant the variance.

Paul G. agrees that it should be a denial.

Jessica agrees that it should be denied due to the creation of second flag is a significant variance request.

Paul V. asked is it the consensus of the board is that the impacts to the neighborhood would be greater than the benefits to the applicant.

John said that is correct. The substantial nature of this is greater than the benefit to the applicant. He asked how it would work, would the board just vote and the resolution will follow? The vote would be for the denial of the variance, with the verbiage to follow.

Paul V. said that a motion to deny the variance based on the balancing test and the overall assessment of the Zoning Board of Appeals that the impacts of the requested variance on the community and neighborhood and nearby neighbors are greater than the benefit of granting the requested variance to the applicant.

John asked for a motion to deny the variance.

Motion made by Paul G., 2nd by Russ.

Roll Call Vote:

Bill-aye

Russ-aye

Jessica-aye

Paul G.-aye

John-aye

All ayes motion carries to deny the variance.

Paul V. said that he will draft the resolution and will have it ready for the board to officially approve at the next meeting.

Administrative:

Minutes to approve:

September 8, 2022

Motion made by Russ, 2nd by Bill.

4-ayes, 1-abstain (John Litts). Motion passed to accept the minutes.