

**Zoning Board Hearing Meeting
1-17-23**

Members Present: Chairman Dustin Geiger, Charity Donnan, Scott Hulburt, Mark Connolly, Heather Nagel(alt.)

Others: Donna Falkner, Carl Peter, Kirk Richenberg, James Campbell, Esq., Joe G. Eyer and Joe H. Eyer (son)

6:30 pm Chairman Geiger called the public hearing to order.

Mr. Campbell read the ad for the meeting in the paper.

**Town of York Zoning Board of Appeals
Public Hearing, January 17, 2023, 6:30 pm**

On **Tuesday, January 17, 2023**, at 6:30 p.m. at the York Town Hall, the Zoning Board of Appeals will hold a public hearing for Joseph Eyer's Use Variance request to allow his son to build a second residence on his property at 2330 Cowan Road, tax map 40.-1-16.115. The Zoning Board of Appeals will convene a regular meeting that will follow the public hearing at 6:45 p.m. on the same date for purposes of considering such application and possible determination of the request that evening. All are welcome to attend and be heard at the aforesaid time and place.

Donna Falkner
Zoning Board of Appeals Clerk
12-26-22

Mr. Geiger read the county response email.

Good Afternoon,

We have received Zoning Referral #2022-102 in accordance with the provisions of Section 239-l and m of the NYS General Municipal Law.

The Livingston County Planning Department has reviewed this application and determined that it has no significant Countywide or inter-municipal impact in regard to existing County plans, programs, and activities. Therefore, approval or disapproval of this application is a matter of local option.

We propose to add the following comment to the response letter:

In order to receive approval for a Use Variance, the Applicant must demonstrate to the Zoning Board of Appeals unnecessary hardship. Such demonstration includes all of the following:

- **Cannot realize a reasonable return**
- **Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood**
- **Requested variance will not alter essential character of the neighborhood**
- **Alleged hardship has not been self-created**

The ZBA should require the Applicant to demonstrate that these hardship criteria are met before taking final action.

Please be aware that a determination of “No Significant Countywide Impact” should not be interpreted as either approval or disapproval by the County Planning Board.

Please find the attached final action notification form for the Town to fill out and kindly send back once a final decision has been made.

If you have any questions, please do not hesitate to contact me at 243-7550.

Thank you,
Stephanie Johnson
Administrative Secretary
Livingston County Planning Department

Mr. Richenberg asked if there had been any written comments.

Mr. Geiger said not since those from the last meeting and asked the Eyers how they would address the criteria for the use variance.

The son said that there was no way around it since his dad needs help daily and his family cannot move into Dad’s comfortably.

Mr. Hulburt asked if house could be built to fit your father’s need or could you separate the present house into two living areas cheaper than building a new one. It would be better to be with him at night if something happened.

Mr. Eyer (son) said with a raised ranch it wouldn’t be possible.

Mrs. Donnan said we see the area, we’re talking about use.

Mr. Eyer (son) said house already set up for handicapped.

Mr. Geiger asked why they felt it was necessary for another residence.

Mr. Hulburt asked if they looked into an addition on the present house.

Mrs. Nagel said she knew someone who added a separate unit for a person to live in as an attachment. You may think a raised ranch would not make it feasible but if you look into it you may find it cheaper.

Mr. Eyer (father) – with the present material cost, they are looking at a modular home to move in there because they think it will be cheaper.

At 6:45 pm Mr. Geiger asked for a motion to open the regular meeting.

Resolution:

Mr. Connolly moved to open the ZBA meeting, Mr. Geiger seconded, all in favor, carried.

Ayes 4 Nays 0

Mr. Geiger opened the regular meeting of the ZBA and led the pledge to the flag.

Mr. Geiger asked if the Eysers wanted to add anything to their answers on the criteria question on page 6 of the ZBA application for use variance. They replied no.

Mr. Geiger asked if there were any comments from the public.

Mr. Richenberg

1. Was there any financial evidence submitted by the applicant to support the variance - answer no
2. Is there any language in code that allows variances to be granted because of medical issues – answer no
3. If granted is there room enough on the existing acreage to meet setbacks and septic system requirements with the additional new home

Mr. Campbell said the rear and side setbacks would be able to be met but that the new structure would not have its own frontage.

Mr. Peter said if the applicant wanted to subdivide so that each house was on its own lot, the applicant would require an area variance because each of the 2 lots would be smaller than required and would result in each having less frontage than zoning allows.

Mrs. Donnan asked if the use variance erases the agricultural zoning requirements. Mr. Peter said no, without a variance, it would still need to meet the minimum lot size, which it currently does as a 4.8 acre lot.

Mr. Campbell – if you grant the use variance request, neither the use variance criteria nor the town Code would require that the lot be subdivided.

Mr. Richenberg asked if the use variance was granted would the second structure be an accessory structure.

Mr. Campbell said that in order for a structure to be an accessory structure, it must be subordinate to the main structure, which it does not sound like what is being proposed in the instant application.

Mr. Richenberg – but if a second residence is allowed will the setbacks be ok?

Mr. Peter – correct

Mr. Campbell – One thing to consider is that if the Applicant connects the two buildings they would not need a use variance. Could possibly attach two buildings with a breezeway.

Mr. Geiger asked where the septic was. They answered the side towards the west.

Mr. Eyer (son) said behind it is a deck and trees.

Mr. Eyer (father) - if they have a breezeway don't have to go back 100 feet.

Mr. Geiger – said they can put a breezeway on the west side toward Federal Road. Modifying the septic rather than an entirely new and separate septic system might be cheaper.

Mr. Peter asked if they had calculated any building costs or septic cost numbers yet? They had not.

Mr. Eyer (son) asked if they could put the breezeway to the door on back of the garage?

Mr. Peter said yes, like the ARC home in Retsof.

Mr. Campbell said it would no longer be considered a separate structure.

Mr. Richenberg – Would request that the board could clarify how the criteria are met one by one – would like to see evidence of financial hardship – have to show it.

Mr. Hulburt – should table this so the Applicant can go to contactor and justify numbers before moving forward.

Mr. Connolly – wouldn't need a variance if the structures were connected.

Resolution:

7:07 pm Mr. Hulburt moved to close the public hearing, Mrs. Donnan seconded, all in favor, carried.

Ayes 4 Nays 0

Looking at the criteria on page 84 of the code:

Criteria 1 Haven't seen any numbers – need financial information – is there a hardship? Mr.

Eyer (father) would breezeway make it one building. Mr. Peter said a breezeway is a common way to make structures into one. Mrs. Nagel asked if two sets of numbers harder. Mr. Campbell said the criteria is really talking about the financial viability of any permitted use and doesn't think it can be demonstrated because the property is already being used as a residential property.

Resolution:

Mr. Geiger moved that they have not met criteria 1 and have provided no evidence of financial hardship, Mr. Hulburt seconded, all in favor, carried.

Ayes 4 Nays 0

Criteria 2 -Mr. Geiger said the zoning classification does not create a unique situation with he Applicant, as many other people are dealing with similar issues of aging persons living at home. The board agreed.

Resolution:

Mr. Hulburt moved that it was not a unique hardship, Mr. Geiger seconded, all in favor, carried.

Ayes 4 Nays 0

Criteria 3 – The board felt that even if granted the area would still remain agricultural with permitted residential use, so the character would not change.

Resolution:

Mr. Hulburt moved that the essential character of the neighborhood would not be changed, Mr. Connolly seconded, all in favor, carried.

Ayes 4 Nays 0

Criteria 4 – Mr. Connolly said he believed that the hardship was not self-created, given the Applicant’s medical circumstances.

Resolution:

Mr. Hulburt moved that the hardship was not self-created, Mr. Connolly seconded, all in favor, carried.

Ayes 4 Nays 0

Resolution:

Based on the findings of this Board, Mr. Hulburt moved to deny the use variance based on the failure of the application to mee all of the necessary criteria, Mr. Geiger seconded, all in favor, carried.3.

Ayes 4 Nays 0

Further Discussion with the EYers:

Mr. Geiger – property already being used, impossible to meet Criteria 1 or 2, which are a part of the Town Zoning Code and NYS Town Law.

Mr. Campbell – recommended they discuss with Mr. Peter about the possibility of setting a second structure right behind the existing house and connecting the two with a breezeway, which would not require a variance, so long as setbacks are maintained.

Mr. Eyer (father) asked how far back the second house would have to be?

Mr. Peter – It could possibly be as little as 10 foot if connected by a breezeway

Mr. Hulburt – suggested they check with MS Association regarding appropriate specs.

Mr. Peter – would need firewall on each end of breezeway

Mr. Eyer (father) – does it matter which way it faces?

Mr. Peter – technically it could go in front of the house. Need to talk to an architect on how to do it.

Mr. Campbell – It also might make sense to consider how marketable the property would be in the future if you have two residences connected.

Mr. Eyer (father) – would it need separate utilities.

Mr. Peter – depends on what you want

Mr. Hulburt – you need to sit down with someone to see what meets your needs.

Mr. Geiger asked for approval of the August 18 and December 13 minutes.

Resolution:

Mr. Connolly moved to approve both August 18 and December 13 minutes, Mrs. Donnan seconded, all in favor, carried.

Ayes 4 Nays 0

Mr. Geiger asked about monthly meetings and cancel when there is no agenda. He will send out list of dates.

Resolution:

Mrs. Hulburt moved to adjourn at 7:37 pm, Mr. Geiger seconded, all if favor, carried.

Ayes 4 Nays 0

Respectfully submitted,
Donna K. Falkner