



TOWN OF SOUTHPORT

1139 Pennsylvania Avenue
Elmira, NY 14904

Minutes Approved by
Board of Appeals
3/16/22

BOARD OF APPEALS

MINUTES
WEDNESDAY, FEBRUARY 16, 2022

PUBLIC HEARING

William Everett, 8 Elan Place, Pine City, NY 14871
NRI – Newcomer Remodeling
Glenn Newcomer

Re: 1243 Pennsylvania Avenue, Pine City, NY 14871

INFORMATIONAL HEARING

Jan Liberatore
121 Orchard Hill Road, Elmira, NY 14903

Re: 901 Southport Street, Elmira, NY 14904

SOUTHPORT TOWN HALL

1139 PENNSYLVANIA AVENUE, ELMIRA, NY 14904
7:00 PM

Webex Meeting

1-650-479-3208

Meeting number (access code):
2630 359 0720

Meeting password:
9W68uVm3EV2

(99688863) from phones/video systems

Minutes of the Zoning Board of Appeals, Town of Southport, held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on February 15, 2022 at 7:00 p.m.

Board Members Present: Justin Faulkner
Belinda Combs
Shawn Crater
Susan Silvers
Edward Steinhauer
Ken Wrigley, Alternate

Others Present: Leslie Connolly, Town Attorney
Peter Rocchi, Town Code Enforcement Officer
Bonnie Balok, Secretary-Zoning Board of Appeals

Also Present: Attorney Stephen Barnstead, Counsel for Applicant
Glenn Newcomer, *Newcomer Remodeling-NRI*
William Everett, (*Via On Line*)

Item No.1. Call to Order

Chairman Faulkner called the meeting to order at 7:00 pm.

Item No. 2. Approval of the Minutes of January 19, 2022

Chairman Faulkner advised the next item on the agenda is the approval of the minutes of January 19, 2022. Motion made by Mr. Steinhauer to accept the minutes as prepared; seconded by Mr. Crater. The minutes of January 19, 2022 were unanimously approved.

Public Hearing – William Everett
8 Elan Place, Pine City, NY 14871
(NRI Newcomer Remodeling-Glenn Newcomer)
Re: 1243 Pennsylvania Avenue, Pine City, NY 14871
Use variance to allow for a cottage industry which is not allowed in R2 zone as per Section 525-Use Regulation Table *(Current Use: Vacant Commercial)*

Item No. 3. New Business

Chairman Faulkner advised the next item on the agenda is a public hearing for William Everett, 8 Elan Place, Pine City, NY 14871 regarding 1243 Pennsylvania Avenue, Pine City, NY 14871 and a request for a use variance to allow for a cottage industry (Section 525-108) which is not allowed in a R2 zone as per Section 525-Use Regulation Table, Tax Map # 109.09-3-40, Zoned: R-2, Current Use: Vacant Commercial.

Present: William Everett *(Via On Line)*
Glenn Newcomer *(At Hearing)*
Attorney Stephen Barnstead, Counsel for Applicant

Glenn Newcomer, spoke o/b/o Newcomer Remodeling (NRI) and William Everett, advised an application for a use variance had been filed concerning 1243 Pennsylvania Avenue, Pine City, NY to allow for a cottage industry. Mr. Newcomer advised he would provide answers to the four (4) use variance questions. *(Note: Mr. Newcomer's response is below in italics)*

Question 1. The applicant cannot realize a reasonable return, provided that lack of return is substantial and demonstrated by competent financial evidence.

All operations will be within the structure, including a shed for storage. The square footage is 10,884, has been an office complex, is excessive for a one (1) family and the cost to remodel the space would be \$130,000 or more. The remodeling would involve such things as removing exam rooms, plumbing, fixtures and installing a complete kitchen and bathroom.

Question 2. The alleged hardship relating to the lot in question is unique and does not apply to a substantial portion of the District or neighborhood in which the lot is located.

This is a unique property compared to neighboring properties. Square footage is much larger than any other home in the area. The property initially required significant remodeling for doctors' offices.

Question 3. The requested use variance, if granted, will not alter the essential character of the district neighborhood in which a lot is located.

This will not alter the neighborhood, the amount of traffic will be minimal, seven (7) to eight (8) employees will work at the customer's site, NRI meets with customers at their homes and the handyman bus will be parked in the rear of the property.

Question 4. The alleged hardship is not self-created.

This is not self-created as it pre-dated the property to the R2 zone which was in compliance with zoning used as an office or business project. NRI not owner of the property and the Town identified the use as a cottage industry. NRI's intent was to have a residence and business in the structure.

Attorney Barnstead advised the articulation, provided by Mr. Newcomer, meets the requirements of the State for a use variance.

Attorney Connolly advised the current situation involved a use variance, prior to that it was a non-conforming use. The property has been vacant for over a year and as per Town Law, the property reverts back to the R2 District. The cottage industry allows no more than three (3) employees who do not reside on the property. There will be a residence plus a work space; work spaces increase. The use is not like uses before, even before this it had different uses. This is a different type of use not just offices. The prior non-conforming use expired. The ZBA has to evaluate use variance and non-conforming variance, but this is not looked on with favor. The people voted on what they wanted the District to be. To introduce this use into that District, there is another one within the R2 District and it is up to the Town Board to look into changing a District. The ZBA is confined to use variance criteria. The non-conforming use expired. Now the property is to be used in a R2 use.

Ms. Silvers advised a previous applicant, Mr. Williams, wanted to put a cottage industry on a property near the 1243 Pennsylvania site and that applicant was denied.

Public Hearing – William Everett
8 Elan Place, Pine City, NY 14871
(*NRI Newcomer Remodeling-Glenn Newcomer*)
Re: 1243 Pennsylvania Avenue, Pine City, NY 14871
Use variance to allow for a cottage industry which is not
allowed in R2 zone as per Section 525-Use Regulation
Table (*Current Use: Vacant Commercial*)

Item No. 3. New Business (*continued*)

Mr. Steinhauer advised he is concerned about the size of the residence compared to the business use, as well as the cottage industry allows for no more than three (3) to four (4) employees, but NRI has stated they will have seven (7) to eight (8) employees.

Attorney Barnstead explained the cottage industry was a label put on by the Town. The variance would be having a business on that property which could be totally business, Mr. Everett may not live there forever.

Mr. Steinhauer explained Mr. Everett would be living there and providing a home school for his children.

Attorney Connolly explained the Town is looking for some mechanism to make it work.

Attorney Barnstead explained the living space is over 10,000 square feet, under cover is 16,000 square feet; no other use for this property, so the property could end up being torn down.

Attorney Connolly explained if the ZBA denies the use variance, the applicant might want to sit down and talk with the Town Board for another use. This has to be up to the Town Board to rezone.

Ms. Silvers advised if the ZBA continues to approve use variances for businesses in these Districts, the Town will be all chopped up. Why bother with zoning.

Attorney Connolly advised the use variance gives questions that must comply with zoning, must match with the Town's Comprehensive Plan, and the purpose and goals of the R2 District; this changes by way of a use variance.

Mr. Crater asked if the Zoning Department received any feedback from residents and was advised no comments were received but one (1) individual is waiting on line to provide a comment. Mr. Crater further explained this is a unique property, close to Mr. Williams' commercial business, and there is a concern about how long it will take Mr. Everett to complete the residential side of this site. The variance requires completing work within one (1) year and failure to complete the project within one (1) year from the granting of the variance will render the variance null and void.

Attorney Connolly advised the applicant can request an extension based upon substantial completion and proof of expenditures.

Mr. Everett advised completion of the residential work would be January 2023; ten (10) months. There would be no exterior storage of materials, he doesn't have a lot of equipment and the drive in garage in the back would hold any equipment he does have so everything would be under roof. There is a handy man truck that would have to be stored. This site will be his primary residence, his family will be home schooled here. Mr. Everett further advised he does intend to live here, doesn't intend to send his children to public school and is not going to be there six (6) months and then move out.

Mr. Steinhauer asked if Mr. Everett isn't storing things on the property, what would he be using the building for?

Mr. Everett explained he would be using the building for ladders, scaffolding, table saws, joiners, routers and custom cabinets, the rest would be storage and office space for himself, the office manager and the handy man.

Ms. Silvers explained when the property was the Dalrymple home there were a lot of large windows and asked if Mr. Everett would be replacing the big windows.

Attorney Connolly advised the large windows have to be closed off so no one can see inside.

Public Hearing – William Everett
8 Elan Place, Pine City, NY 14871
(*NRI Newcomer Remodeling-Glenn Newcomer*)
Re: 1243 Pennsylvania Avenue, Pine City, NY 14871
Use variance to allow for a cottage industry which is not
allowed in R2 zone as per Section 525-Use Regulation
Table (*Current Use: Vacant Commercial*)

Item No. 3. New Business (*continued*)

Mr. Everett advised the property will look like any residential structure outside the house; may see handyman vehicle because that won't fit in the current space.

Mr. Crater stated this property has been vacant almost two (2) years, exceeds the one (1) year time and several variances have been granted in the past.

Mr. Rocchi provided a history of the variances on the property; Dalrymple home, variance for Dr. Groff, variance for partnership and variance for Guthrie Medical, now it reverts back from non-conforming to R2.

Ms. Silvers advised if the ZBA rezoned here and there, that would disregard the zoning Districts in the Town.

Mr. Steinhauer advised if the ZBA gives a variance then the applicant goes to the Planning Board for a site plan review.

Chairman Faulkner opened up the public hearing to the public for comments on the variance application requested by Mr. Everett.

Mr. James Gensel, commented via on line, 1246 Pennsylvania Avenue, Pine City, across the street from the project site. Mr. Gensel advised this is not a big problem with office space, but any manufacturing would be objectionable. If everything is under cover that would be okay, but noise and construction would not be welcomed in a residential area. Mr. Gensel further advised the manufacturing does concern him and he hasn't seen a site plan.

Mr. Newcomer responded to Mr. Gensel's concerns. Mr. Newcomer explained where the business is currently located they are in a residential area. The table saw is used for brief periods of time, they can't produce industrial items, and all work will be done undercover in the rear area of the building. They have never had any problems with the current neighbors where they are now.

Chairman Faulkner asked if there were any other comments from the public present or one line; no other comments were made. Motion to close the public hearing by Mr. Steinhauer; seconded by Ms. Silvers. Public hearing portion closed.

Mr. Crater made a motion to vote on the use variance for Mr. Everett with a yes vote granting the variance in a R2 zone as per Section 525-108.

Chairman Faulkner and the Board reviewed the use variance criteria based on the four (4) use variance questions. (*Note: the Board's responses are below in italics*)

Question 1. The applicant cannot realize a reasonable return, provided that lack of return is substantial and demonstrated by competent financial evidence.

No – 3; Ms. Combs, Ms. Silvers, Mr. Steinhauer

Yes – 2; Mr. Crater, Mr. Faulkner

Question 2. The alleged hardship relating to the lot in question is unique and does not apply to a substantial portion of the District or neighborhood in which the lot is located.

No – 2; Mr. Crater, Mr. Faulkner

Yes – 3; Ms. Combs, Mr. Silvers, Mr. Steinhauer

Question 3. The requested use variance, if granted, will not alter the essential character of the district neighborhood in which a lot is located.

No – 5; Unanimous – All Board Members

Yes – 0

Question 4. The alleged hardship is not self-created.

No – 0

Yes – 5; Unanimous – All Board Members

Informational Hearing – Jan Liberatore
121 Orchard Hill Rd, Elmira, NY 14903
Re: 901 Southport St, Elmira, NY 14904
Area variance for a reduction in lot width that does not meet the required lot width as per Section 525-24 Bulk and Density Control Schedule in R2 zone. The parcel currently does not meet the required lot width of seventy five feet (75')

Item No. 3. New Business *(continued)*

Chairman Faulkner advised the next item on the agenda is an informational hearing for Jan Liberatore, 121 Orchard Hill Road, Elmira, NY 14903, requesting an area variance, at 901 Southport Street, Elmira, NY 14904, for a reduction in lot width that does not meet the required lot width as per Section 525-24 Bulk and Density Control Schedule in R2 zone. The parcel currently does not meet the required lot width of seventy five feet (75')

Present: Jan Liberatore, Applicant
Attorney Richard Keyser, Counsel for Applicant

Attorney Keyser, stated his name and law firm, Keyser, Maloney and Winner, and advised he is representing Jan Liberatore. Attorney Keyser advised Jan will provide the history of this whole situation which dates back to 1916. The area has been divided and is near the Coachman Motor Lodge and may out case map lots; all forty six feet (46'), 1-2-3 is a reference to case lots and there is no way to meet the requirement of seventy five foot (75') lots required by the Town.

Jan Liberatore advised in 1920 his great grandfather bought three (3) lots and built two (2) houses there, he passed on in 1940 and one great aunt was willed the property; from 1940, until her passing, the area was never divided into two (2) separate properties. In 1984, the property was split into two (2) separate parcels; the small house, one aunt wanted to buy, the bigger house, the second aunt wanted to buy; the new survey drew lines down the middle; this survey shows the lot line five feet (5') from the small house; in 1990, the aunt, living at 901 Southport Street, passed away.

Attorney Keyser advised Mr. Liberator purchased both properties, wants to keep the small house, and sell 901 Southport Street. The property went back to two (2) separate surveys; Mr. Liberatore wants to revert to the original lots and move ten feet (10') back, the same as it was. Nothing is going to change after an area variance, there will be two (2) single family homes; property at 899 will have sufficient room to bring in a lift to do the siding. Nothing changes other than the lot line; Mr. Liberatore owns both lots Parcel A-901 Southport Street and Parcel B-899 Southport Street, closer to Fred Street. In 1916 there were three (3) lots; now, changing the front boundary, no change to the back boundary.

Chairman Faulkner explained the public hearing would be the next step and paper work details will be provided by Bonnie Balok. Public hearing scheduled for Wednesday, March 16, 2022 at 7:00 pm *(to be held before the Public Hearing tabled for Everett/Newcomer on February 16, 2022 and to be heard on March 16)*.

Attorney Connolly advised the SEQR would be done before rendering a decision.

Informational Hearing Adjourned: 8:27 pm

Item No. 4. Old Business

No discussion took place.

Item No. 5. Discussion

No discussion took place.

Item No. 6. Adjournment

Ms. Silvers made a motion to adjourn; seconded by Mr. Steinhauer

Adjourned: 8:30 pm

Original on File: Town Clerk
Copy: Town Supervisor, Town Attorney, Town Code Enforcement Officer
Board of Appeals Town Board Planning Board
Minutes to: Mr. Jan Liberatore, 121 Orchard Hill Road, Elmira, NY 14903

Bonnie J. Balok
Secretary-Zoning Board of Appeals
February 18,, 2022