

Zoning Board Public Hearing
06-16-2021

Members Present: Mark Connolly, chair, Scott Hulburt, Amy McMahon

Others: Donna Falkner, Carl Peter, Kirk Richenberg, David & Sandy Sliker, Zachary Kobylanski, Renee Young, Mark & Tracie Cole, April Mack, Atty. James Campbell, Ron Rossborough

7 pm – Chairman Connolly opened the two public hearings for the Rossborough continuance and for VersaScape.

**Zoning Board of Appeals
June 16, 2021, 7 p.m.
Continuation meeting for Rossborough**

The York Zoning Board of Appeals will meet Wednesday, June 16 at 7 p.m. to continue the public hearing from April 21 for Ronald Rossborough's area and use variance request for a flea market in Retsof at 2727 Genesee Street.

**Town of York Zoning Board of Appeals
Public Hearing**

On Wednesday, June 16, 2021, at 7:00 p.m. at the York Town Hall, the Zoning Board of Appeals will hold a public hearing for an area variance for Zach Kobylanski to put up a sign taller than allowed,

Chairman Connolly invited the public to speak on either subject.

VersaScape – Mr. Sliker

- 12 sq. ft in ag district – lot of vehicles coming and going and then to put up an oversized sign.
- Mr. Sliker read Town Board minutes from July 30, 2019
- Mr. Sliker concerned that on tax roles VersaScape a commercial business on ag land
- Mr. Kobylanski said it was his understanding that he was classified under ag because of his horticultural business
- Mr. Sliker commented that he had been a good neighbor but the town needs to settle issue before he goes ahead with sign. Right now he's illegal because it was never followed up that he could find.
- Mr. Campbell said the zoning district was changed to agricultural. Agricultural business or ag can have signs. Area variance criteria on page 84 of zoning. The board can research Mr. Sliker's concerns and keep the public hearing open until next meeting.
- Mr. Kobylanski said the sign is 4 ft x 7.10 ft. and mounted on a retaining wall surrounded by landscape.
- Mr. Connolly said that the sign is 9 ft 9 in. from the ground to top of sign. Sign itself is 4x7.10
- Mr. Campbell said structure makes sign higher than allowed
- Mr. Richenberg – 12 sq. ft.
- Mr. Connolly – Maximum is 12 sq. ft.
- Mr. Richenberg – notice says height variance
- Mr. Campbell – application should be amended containing height and width variance

- Mr. Richenberg – to clarify Mr. Sliker’s concern, he thinks it was one or two meetings after that town meeting.
- Mr. Campbell – Business fits in under application for ag business
- Mr. Sliker – so he can pay ag taxes?
- Mr. Campbell – if zoned ag different tax rates apply based on assessors rate for what is there
- Mr. Sliker – he’s sing one quarter or 1/3 of the lot used for farming
- Mr. Connolly – we need to research documents whether zoned to agriculture
- Mrs. McMahon – stated that signage would be different if he is commercial
- Mr. Sliker – assumes its ag but whether or not its ag business
- Mr. Campbell – it takes a town law to change zoning
- Mr. Kobylanski – taxes are based on what’s on it plus the land
- Mr. Sliker – it was planned development change to ag
- Mr. Campbell – on one parcel you can have multiple uses, not just growing crops. You can put down paver blocks without a permit. There are two variance requests – one for height and for square feet
- Mr. Connolly – we will keep the public hearing open to the next meeting so Mr. Kobylanxki can redo his application. We can’t address the zoning which is allowed
- Ms. McMahon – is it zoning in question?
- Mr. Campbell – zoning is already decided
- Mr. Richenberg asked if sign was lighted
- Mr. Kobylanski said no
- Mr. Connolly asked how close to road? When you resubmit include this.

Resolution:

Mr. Hulburt moved to hold the public hearing open for VersaScape until next meeting pending resubmission of application, Mr. Connolly seconded, carried.

Aye – 3 Nay – 0

Rossborough Public Hearing

- P. 84 in code for use variance criteria
- Mr. Campbell said there was no action from the county because lack of quorum. They did submit some advisements
- No comments from public

Mr. Connolly closed the public hearing for Rossborough at 7:45 pm and opened regular zoning board meeting.

Resolution:

Mr. Hulburt moved to approve the May 19, 2021 minutes, Ms. McMahon seconded, carried.

Aye – 3 Nay – 0

Mr. Connolly said the county has left the Rossborough decision up to the town. Mr. Rossborough is asking for a 3000 sq. ft. area variance.

Mr. Hulburt asked what about a site plan.

Mr. Campbell said that he can't do a site plan until the use variance is taken care of and then it goes to the Planning Board.

Mr. Connolly read each of the use variance criteria Town Law 267, a, page 84 of Zoning Code

1. The applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence.
 - Mr. Connolly said that no figures had been submitted.
 - Mr. Hulburt said no tangible evidence
 - Mr. Connolly said that a trail of shops had been started over multiple towns
 - Mr. Rossborough said he had started the trail
 - Mr. Connolly said similar businesses have not done well here in the past and have closed. It may help other business in the plaza and create more financial income
 - Mr. Hulburt said it doesn't really fit
2. The alleged hardship relating to the property in question must be unique, and not apply to a substantial portion of the district or neighborhood.
 - Mr. Rossborough – several business allowed to display outdoors, Dollar General, Davis Trailer World
 - Mr. Campbell – can display as long as it doesn't expand over 5% (area variance)
 - Mr. Connolly – hardship – use not reflected in zoning
 - Mr. Campbell – whether it's unique as to other properties doing it – not permitted use at all
 - Mr. Rossborough – selling in general and retail allowed
 - Mr. Campbell – sale not the issue, but business of operating a flea market with transient vendors
 - Mr. Hulburt asked he doesn't own the property?
 - Mr. Rossborough – renting the whole area inside and out from Mr. Mignemi
 - Mr. Connolly – landlord came to last meeting and said the property was vacant for a long time
 - Mr. Campbell – there will be multiple tenants
 - Mr. Rossborough – owners of the property have indoor storage in the middle with pizza on the other end
 - Mr. Connolly – thinks its unique – antique/cooperative shop with flea market as an extension
 - Mr. Campbell – hardship is financial?
3. That the requested use variance, if granted, will not alter the essential character of the neighborhood
 - Not an issue
4. That the alleged hardship has not been self-created
 - Ms. McMahon asked if it can be interpreted as he planned it
 - Mr. Campbell – most interests are self-created – enhancement of doing something outside the business
 - Mr. Connolly – can't disagree
 - Mr. Campbell – code doesn't afford him the language to permit it. Code could be changed to address it.
 - Ms. McMahon – has anyone given solid reasons against it?
 - Mr. Rossborough – everyone has been excited about the prospect of the flea market – no one opposed to it

- Ms. McMahon – have you contracted with anyone
- Mr. Rossborough replied that he has contacts but no contracts till he gets a decision
- Ms. Mack said he rented the property with the understanding he could use the property for a flea market
- Mr. Campbell – has heard no negative comments from the public but use variance is a radical action to override legislative body. Use variances are not the same language as area variances.
- Mr. Rossborough – 5% outdoor sales area. 604a from code officer – didn't have anything from beginning except 5% of outdoor sales
- Mr. Peter agreed – flea market type of use not permitted
- Mr. Campbell asked why he is seeking a use variance
- Mr. Rossborough asked what the difference is from inside to outside. There is nothing in code about inside
- Mr. Hulburt asked about farmers markets
- Mr. Campbell – these can be regulated by Ag and Markets
- Ms. McMahon asked if it would only be on weekends
- Mr. Rossborough said yes
- Mr. Connolly thinks it's a good thing and understands the law
- Mr. Campbell said to encourage the Town Board to change the zoning
- Mr. Connolly can see that with-out flea markets to drive business
- Mr. Peter – doesn't he need to have business open to see how viable it is
- Mr. Rossborough – chose area for outdoor use. Will lose rent from vendors. Inside 1500-1600 sq ft to use and part of that is his stuff. Maybe \$600/mo. inside. 20x\$20 outside = \$400/week, \$9600 for season May-October
- Mr. Peter – he hasn't sold inside yet so doesn't know how much
- Ms. McMahon – catch 22 on first criteria – can see the draw for seasonal folks
- Mr. Connolly said what if he just goes for area variance
- Mr. Campbell – but he has other vendors selling – area variance is for exceeding 5%
- Mr. Rossborough – 405c, b – retail definition and general definition – where does it say because I'm renting. 604, pg. 54
- Mr. Campbell said it does not fit in permitted space
- Mr. Hulburt said you haven't been able to meet the four criteria. You should have gone to the Town Board to have them change it
- Mr. Campbell – town doesn't give legal advice. Up to the applicant to read the code and determine what needs to be done.

Mr. Connolly commented that it was a good discussion and we need a flea market to drive some revenue. Board members were asked how they would vote for the first criteria.

Mr. Connolly – yes

Ms. McMahon – yes

Mr. Hulburt – yes

Mr. Connolly said it is unique in way its laid out

Mr. Connolly – yes

Mr. Hulburt – yes

Ms. McMahon – yes

3. It would not alter the essential character

Mr. Connolly – yes

Mr. Hulburt – yes

Ms. McMahon – yes if all tables, etc. would disappear at end of day

Mr. Rossborough yes and only would be Saturdays

4. Alleged hardship not self-created

- Ms. McMahon - it's not self-created because zoning doesn't refer to it. Mr. Campbell said you can't do that
- Mr. Peter – doesn't create hardship because doesn't know income of the store yet or income from rent
- Mr. Connolly – how do we prove that a hardship is created?
- Mr. Campbell – burden of proof is on the applicant
- Mr. Rossborough – if the code allowed it there would be no hardship
- Mr. Connolly says not self-created, Ms. McMahon said not self-created and told by the landlord he could, Mr. Hulburt doesn't agree and not convinced it has happened.
- Mr. Campbell – self-created hardship is something not created by the applicant. He will find examples of self-created hardships
- Mr. Rossborough asked if board decides to approve it, who could stop it?
- Mr. Campbell – member of ZBA, neighbor, Town Board or Code Enforcement Officer

Mr. Campbell read the SEQR part 2 questions which the board answered as follows.

Project: Redwood

Date: 6/14/21

Short Environmental Assessment Form Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>
7. Will the proposed action impact existing:	
a. public / private water supplies?	<input checked="" type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>

Resolution:

Mr. Connolly moved to adopt the official findings of SEQR, Ms. McMahon seconded, carried.

Aye – 3 Nay – 0

Resolution:

Mr. Hulburt moved to declare a negative declaration, Ms. McMahon seconded, carried.

Aye – 3 Nay - 0

Ms. McMahon asked if the variance is on the property or stays with the owner.

Mr. Campbell said it stays with the property.

Resolution:

Mr. Connolly moved to grant the use variance, contingent on the site plan approval, Ms. McMahon seconded, carried

Aye – 2 Nay – 1

Mr. Connolly - Mr. Rossborough's area variance is for 3000 sq. ft. – 10x10 spaces

Mr. Campbell – the code says 5% - be mindful that other applicants may want the same.

Mr. Peter – the entire structure is 12,000, he's renting 2600 of it

Mr. Rossborough said he was seeking 3000 sq. ft. not on the building but the land he's renting, the other two would not have it.

Mr. Peter said impacted would be parking for storage business or pizza business. He can't use all the parking.

Mr. Hulburt – couldn't he mark out parking areas

Mr. Peter – that will come under site plan not zoning. Storage is half of the building.

Criteria for area variance and answers from board

- i) 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.
Nay - 3
- ii) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
Nay - 3
- iii) Whether the requested area variance is substantial.
Nay - 3
- iv) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
Nay - 3

- v) 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.

Nay – 2 Aye – 1

Resolution:

Mr. Connolly moved to grant the area variance for 3000 sq. ft., Ms. McMahon seconded, carried.

Aye – 3

Mary & Tracie Cole want to sell house and subdivide farmland.

Mr. Peter said the two lots they want to split off the main lot are smaller than the 3 acres required by zoning.

Resolution:

Mr. Connolly moved to hold a public hearing for the Coles on June 30, Ms. McMahon seconded, carried.

Aye – 3 Nay - 0

Resolution:

Mr. Hulburt moved to adjourn at 9:30 p.m., Mr. Connolly seconded, carried.

Aye – 3 Nay - 0

Respectfully submitted,

Donna K. Falkner