

Zoning Board Public Hearing  
4-21-2021

Members Present: Mark Connolly, chair, Charity Donnan, Scott Hulburt, Dustin Geiger

Others: Donna Falkner, Carl Peter, Kirk Richenberg, Ronald (208-8837) & Mary Rossborough, Aprile S. Mack, Michelle & Theodore Ryan, Ken Mignemi & Heather, Liv. Co News – Brendan McDonough

7 pm – Chairman Connolly opened the public hearings for Theodore & Michelle Ryan and Ron Rossborough and read the ads for each.

### **Town of York Zoning Board of Appeals**

#### **Public Hearing**

On **Wednesday, April 21, 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 Theodore & Michelle Ryan for a proposed garage in their front yard with a rear setback of 26.5 ft. (tax map 61.-1-31.1). All are welcome to attend.

### **Town of York Zoning Board of Appeals**

#### **Public Hearing**

On **Wednesday, April 21, 2021**, at 7:00 p.m. at the York Town Hall, the Zoning Board of Appeals will hold a public hearing for an area and use variance for Ronald Rossborough for a proposed outdoor flea market in the old Shurfine Plaza on the old bank's turn around . All are welcome to attend.

#### **The Ryans**

- Mr. Ryan said that they had two separate lots that could be merged into one lot.
- Mr. Peter said they had two front yards and that Zoning (402g) with minimum set back of 30 ft so there be a variance of 3 ½ ft.
- Mr. Ryan said the proposed building would be on the side and they have since joined the 2 parcels into one tax map
- Mrs. Donnan asked about the lot next to them.
- Mr. Ryan said it was owned by the Vitales and there was a water easement there that they would not encroach on
- Mrs. Ryan said they had always mowed that water line because Vitale had said it was ok. She said their big sugar maple came down and demolished the old building so they decided to build. 8 ft. to south and 16 ft. to west

Mr. Connolly read the 5 criteria for area variance that must be proven in order to be granted (from NYS Division of Local Gov't)

1. 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 variance
2. Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance
3. Whether the requested area variance is substantial
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether an alleged difficulty is self-created

Mr. Connolly stated that we would hold this hearing open and opened the Rossborough public hearing at 7:10 pm

The Rossboroughs

- Mr. Rossborough is opening an antique store where the old bank was on the west side of the building and would like to have a flea market outside where the turnaround for the bank was and also maybe a farmer's market
- Mr. Peter told him that it was not a permitted use in zoning and he would have to get a use variance.
- Mr. Rossborough disagreed and doesn't know why he has to go along with 5% rule when Dollar General and Davis Trailer World can have stuff outside their buildings. There won't be any through cars and there's plenty of parking. He also provided photos of his space and asked why he had to have a use variance.
- Mrs. Donnan asked how many vendors he would have if stuck to 5%
- Mr. Rossborough said vendors 10x10 space would only allow him 7
- Mr. Hulburt asked how many he thought he could have
- Mr. Rossborough said he would like 30 vendors plus 6 food vendors from 8 am – 5 pm. They would not be allowed to have their cars in the area of their booths. He also has tables he can lend them. They could rent space inside from Ken Mignemi to store their goods. Local people he has talked to likes the idea.
- Mr. Mignemi said they could park 30-40 cars there
- Mr. Rossborough thought it would draw more local people.

Mr. Connolly said he would turn the legal part of this over to the town attorney, Jim Campbell.

Mr. Campbell – the application asks for both use and area variances.

- Need to determine whether you want ZBA to hear appeal of Zoning Officer decisions
- Use variance is fairly rigid with four criteria that has to be met
- An area variance more subjective
- Because the business is personal in nature it will have to go to County Planning Board for site plan review

Ms. Mack – she is here on behalf of Ron and is still confused about use and area

Mr. Campbell – it comes down to what he wants to accomplish. He has multiple uses – flea market, store and farmer’s market

Mr. Peter – store is a permitted use, outside flea market not permitted in code and it’s 5% of his store not the whole building.

Mr. Rossborough – but code says primary structure

Mr. Peter – to share parking is probably not a big problem. Flea market is entirely different from inside.

Mr. Rossborough asked for use variance because flea market is not allowed.

Mr. Campbell – if you have a 1500 sq.ft. building and 3 tenants, each is limited to 5% outside.

Mr. Rossborough – 738 sq.ft is 5% on the end of the building. It would allow others to bring goods to sell.

Ms. Mack – I would think York would like to make use of the space there.

Mr. Campbell – question is how to do it – go through with the use variance and then ask for an area variance.

Mr. Rossborough – I’m pretty well done with the inside of the store. Outside sales will help bring people in.

Mr. Geiger – just to clarify Davis Trailer World vehicle sales was prior to zoning and so therefore pre-existing and non-conforming

Mr. Rossborough - I did a small flea market a week ago, before I found out it wasn’t allowed, and everyone who stopped was exciting about it.

Mr. Hulburt asked about restrooms. Mr. Rossborough said he has two restrooms that people can use.

Mr. Connolly read the criteria for use variance

1. That the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual “dollars and cents” proof must be submitted)
2. That the property is being affected by unique or at least highly uncommon circumstances

3. That the variance, if granted, will not alter the essential character of the neighborhood, and
4. That the hardship is not self-created.

If any one or more of these factors is not proven, state law requires that the ZBA must deny the variance.

Mr. Connolly said that it has to go to the county who will review it and get back to us.

Mr. Campbell advised Mr. Rossborough to write up a paragraph about each of the 4 criteria to send to the county stating his case. Email it to the clerk. Advised Mr. Rossborough to look at p. 84, section 902 in town code and 267B in town law.

Mr. Mignemi – in favor of Ron’s proposal and he has put a lot into the building already. No one has wanted that space until Ron and JT’s pizza is also in favor of it. He is also looking forward to the business it will bring.

Mr. Campbell said if it doesn’t pass, Mr. Rossborough might want to go to the Town Board and say maybe the code should be changed to allow flea markets.

Mr. Campbell said to leave the Rossborough public hearing open until county replies.

**Resolution:**

Mr. Geiger moved to leave the Rossborough public hearing open until next meeting, Mr. Connolly seconded, carried.

Aye – 4            Nay – 0

**Resolution:**

Mr. Connolly moved to close the Ryan public hearing, Mrs. Donnan seconded, carried.

Aye – 4            Nay - 0

7:54 pm – Mr. Connolly opened the ZBA meeting

**Resolution:**

Mrs. Donnan moved to approve the March 31, 2021 minutes, Mr. Hulburt seconded, carried.

Aye – 4            Nay - 0

Mr. Connolly the board their answers to the five criteria listed above for an area variance for the Ryans.

1. Consensus was no
2. Consensus was no
3. Consensus was no
4. Consensus was no
5. Consensus was no

**Resolution:**

Mr. Hulburt moved to grant the Ryan's (ryantaxidermy@aol.com) area variance, Mr. Geiger seconded, carried.

Aye – 4      Nay - 0

Mr. Connolly said under Old Business we received a letter from the county saying Twisted Stitches didn't have all the paperwork done for the county so up in the air yet. We'll decide on Rossborough May 19 when we have a public hearing for McMahon at 7 p.m.

Mr. Geiger agrees with Mr. Peter's interpretation for Rossborough. Mr. Hulburt thinks the town should look into updating the zoning regarding flea markets.

**Resolution:**

Mr. Geiger moved to adjourn at 8:08 p.m. Mrs. Donnan seconded, carried.

Aye – 4      Nay - 0

Respectfully submitted,  
Donna K. Falkner