

ZONING BOARD OF APPEALS MEETING
January 15, 2015
6:00PM

The meeting was called to order by Chairman Bill Gabak at 6:00PM. Roll call by Clerk, Cindy Schiminske, found the following Board Members present:

William Gabak, Chairman
Phil DelloStritto
Neal VanLiew
Kathy Taylor
Fritz Allen

Also in attendance: Don Bowen, Zoning Inspector
Hugh & Margaret Crowley
Robert Marinella
Al Shepardson
Deb Collier
Taras Hrycko

The purpose of this meeting was to hear the request of Hugh Crowley who is requesting an area variance for the creation of 3 separate parcels out of the existing parcel known as Tax Map #136.04-1-22. Two of the proposed parcels would have less than the minimum lot width required in the Bulk & Use Table for the Hamlet District. Ref. Town of Fleming Zoning Code: Bulk & Use Table, Hamlet.

Mr. Crowley would like to split up his existing lot. Originally it was two lots and the Crowleys combined them into one parcel. There are two houses on the parcel. Mr. Crowley would like to separate the lot so that the people that are living in the two existing houses can own their own land. Mr. Crowley stated that one of the houses has been there for over 35 years and the other has been there over 150 years. Mr. Crowley indicated that the back lot would not be landlocked as the adjacent property owner, Taras Hrycko, plans on purchasing it. Chairman Gabak pointed out that Mr. Crowley added enough property to each of the two front lots to make them compliant with the total number of square feet that is required, which is half an acre. The proposed lots have .571 of an acre and .523 of an acre, so he is compliant there. The only place he is not compliant is with his road frontage.

Chairman Gabak reviewed the categories of area variances for the Board:

Area variances – the ZBA shall have the power, upon appeal from a decision or determination of the Zoning Officer, to grant area variances. In order to grant the area variance, the applicant has the burden to prove that their application meets the required criteria. Chairman Gabak explained that nothing is going to change concerning the usage of this property. It will still be residential.

- A. *In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.* Chairman Gabak asked if anyone on the Board saw any detriment to the health, safety and welfare of the community by granting this variance. All indicated that they did not.

In making such determination, the Board shall also consider:

- B. *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.* Chairman Gabak indicated that they have already heard from Mr. Crowley that the trailer has been there for over 35 years and the house has been there for over 100 years. There will be no new construction. It will look the same as it does now. The only thing that is different is that they are going to be separated and have a property line between them. He asked if the Board saw any problems with that. The Board all indicated that they did not.
- C. *Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.* Chairman Gabak questioned whether Mr. Crowley could achieve his goal any other way without having the lots split up. He asked the Board if they had any comments or ideas about that. The Board indicated there is no other way for him to achieve this.
- D. *Whether the requested area variance is substantial.* Chairman Gabak stated that it's only substantial because they have the third lot to deal with in the back.
- E. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.* The Board did not believe it would.
- F. *Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.* Mr. Crowley indicated that he purchased the land with the two structures on it and then combined it.
- G. *The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.* Chairman Gabak stated he didn't see where this would be a problem.

Chairman Gabak advised the audience that according to the current Zoning Law for Fleming, the minimum lot width in the Hamlet is 125 feet to create lots. Referring to a map of the Hamlet, in the area around Dublin Road and Mill Street, there are numerous properties that have road frontages that are not in compliance. The proposed Crowley lots have a width of 87.56' and 83.15'. In this neighborhood, that is not a big difference as to what currently exists.

Mr. Marinella of 4996 Route 34 lives right next door to the Crowley property. He indicated he wasn't sure whether he was opposed or in favor. He just had some questions. His first question was "Why? Is this a financial gain request? Is he subdividing for the purpose of financial gain?" He also had concerns about the various existing non-conforming issues on the property and adding to it with this proposed variance. Don Bowen indicated that this is a pre-existing, non-conforming lot and one of the concerns, as it is now, is that it doesn't comply with the Zoning Law, as it has more than one residence on the parcel. The Hamlet District allows one residence per lot or parcel. By creating two parcels on the road, they become compliant with the exception of the frontage. There was more discussion about non-conforming lots. Mr. Marinella also brought up "is it a self-created hardship?" He believes that it is a self-created hardship as Mr. Crowley has owned the property for a long time and has created these two residences on one property. Mr. Bowen wanted to address the hardship issue and pointed out that in

the Zoning Code there are two types of variances. A use variance, which is what you want to use your property for and an area variance. The use variance uses the word "hardship". Area variances don't contain the word "hardship". The Town of Fleming doesn't look at an area variance as a self-created hardship. Hardship issue is really strictly for uses of property. Mr. Marinella would still like to know why this is being done. Mr. Bowen pointed out that as it currently exists, the property is noncompliant. It will become, in the eyes of some, more compliant by creating two lots. Each residence has its own parcel instead of two residences on one parcel. Also, the road frontage is similar to most of the properties in that short stretch of road. Mr. Marinella asked if the Planning Board had provided a written recommendation and referred to Sec 14.13 of the Zoning Code. Chairman Gabak stated that the Planning Board will not move on this until the ZBA grants a variance. Mr. Bowen stated the applicant has been to the Planning Board and their decision was that they wouldn't consider his application to subdivide the property until he went to the ZBA to see if what he wanted to do would be acceptable and if they would grant him a variance.

Al Shepardson spoke on behalf of himself and Deb Collier. He didn't view this as financial gain for Mr. Crowley. Most of the hamlet is non-compliant. Nothing is changing. He sees more benefit from this variance than detriment.

Taras Hrycko spoke that he was the one interested in purchasing the back lot. Mr. Marinella expressed concerns that the parcel would be landlocked. Chairman Gabak says before they vote on this, he would like to see a contract of sale on the 3.6 acres of land on the back that is landlocked. Mr. Hrycko said he would write that down and he and Mr. Crowley will sign it and have it notarized. Chairman Gabak advised Mr. Crowley that the approval of the variance would be contingent upon the actual sale of the 3.6 acres to Mr. Hrycko. If something happens and Mr. Hrycko does not purchase the property, the variance would fall through. Mr. Crowley and Mr. Hrycko signed the agreement and presented it to the ZBA Clerk to notarize their signatures. This agreement is attached to and made a part of these minutes. Mr. Hrycko plans on merging the lot with his property and has already spoken with Cayuga County Real Property about the process.

A motion was made by Bill Gabak to vote on this request and seconded by Kathy Taylor. Roll call vote was taken by the Board.

Phil DelloStritto	Yes
Neal VanLiew	Yes
Kathy Taylor	Yes
Fritz Allen	Yes
Bill Gabak	Yes

MOTION APPROVED on the contingency that the 3.6 acres in the back gets sold as per the attached agreement.

Motion to adjourn made by Bill Gabak, and seconded by Phil DelloStritto. All in favor. Time was 6:38PM

Respectfully submitted,

Cindy Schiminske, ZBA Clerk