

April 28, 2008

The regular monthly meeting of the ZONING BOARD of APPEALS of the TOWN of CAMBRIA was called to order by Theresa Kroening, Vice Chairwoman, at 8:00 P.M. followed by the Pledge to the Flag.

Members present: Theresa Kroening, Vice Chairwoman  
Norman Allen, Donald Robinson, Peter Smith  
Michael Bechtel, alternate  
Member absent: John Reardon  
Also present: Robert Blackman, Councilman, liaison  
Clifford Burch, Building Inspector  
Donald Lane, Deputy Building Inspector  
Gary Billingsley, Attorney

Mrs. Kroening welcomed everyone to the regular meeting and also the alternate board member, Michel Bechtel, and then announced the agenda for tonight's meeting.

Secretary read Notice of Public Hearing as it appeared in the Lockport Union Sun and Journal to consider the following applications:

**(08-23-07B) JASON and ANN DUMAIS**, 3473 Upper Mountain Road, Sanborn, N.Y. 14132, for a rehearing for an Area Variance to permit applicants to construct a residence 475 feet from the road right-of-way upon premises located on the west side of Shawnee Road between Upper Mountain Road and Lower Mountain Road, whereas the Zoning Ordinance does not permit construction of such a structure farther from the road right-of-way than 125 feet.

**(03-12-08) PAUL and ROBERTA FREATMAN**, 3699 North Ridge Road, Lockport, N.Y. 14094, for an Area Variance to permit applicants to construct a barn with dimensions of 60 feet by 150 feet upon premises commonly known as 3782 North Ridge Road approximately 40 feet from the east side lot line, whereas the Zoning Ordinance does not permit construction of such a structure closer to a side lot line than 100 feet.

**(03-13-08) MICHAEL and BRENDA GROSS**, 4664 Green Road, Lockport., N.Y. 14094, for an Area Variance to permit applicants to construct a residence and barn 160 feet from the road right-of-way, whereas the Zoning Ordinance does not permit construction of such structures farther from the road right-of-way than 125 feet.

A motion was made by Mr. Robinson and seconded by Mr. Smith to approve minutes of meeting of March 17, 2008 as presented. Unanimously approved, motion carried.

A motion was made by Mr. Smith and seconded by Mr. Robinson to approve minutes of Special meeting of April 7, 2008 as presented. Unanimously approved, motion carried.

#### **CURRENT SPECIAL PERMIT RENEWALS:**

**2004-05 (03-31-04B) Mr. and Mrs. Robert Storrey**, 3927 Fair Court East, Sanborn, N.Y. 14132  
Special Permit to operate a Home Sewing business

Mrs. Storrey was present at this meeting and said she would like to renew the Special Permit. Previous renewal was for three years.

Building Inspector said he had received no complaints on this business.

A motion was made by Mr. Robinson and seconded by Mr. Allen to **renew** Special Permit to Mrs. Storrey for a home sewing business for a period of three (3) years. Unanimously approved, motion carried.

Mrs. Storrey said for the records, her husband died and she requests the Special Permit in her name, Rosalie Storrey.

**2004-07 (04-01-04B) Mr. and Mrs. Edward Pufpaff, 5184 Shawnee Road, Sanborn, N.Y. 14132**  
Special Permit to operate a dog kennel

Mr. and Mrs. Pufpaff were present at this meeting and said they wish to continue with the dog kennel. The previous renewal was for three years.

Building Inspector said he had received no complaints on this business.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to **renew** Special Permit to Mr. and Mrs. Edward Pufpaff to operate a dog kennel for a period of three (3) years. Unanimously approved, motion carried.

#### **PUBLIC HEARINGS:**

**(03-12-08) PAUL and ROBERTA FREATMAN** were present at this meeting and have submitted the following: Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement, sketch of the new building and other buildings on the property and tonight submitted an aerial view of the farm.

Mr. Freatman said they would like to construct a 60' by 150' pole barn which will be approximately 40' from the east side lot line. New building will be behind all of the existing buildings on the property at 3782 North Ridge Road.

Public Hearing open: there were no comments from members of the public.  
Public Hearing closed.

Concerns of board members:

Mr. Smith asked applicants when they plan to start construction of the new building?  
Mr. Freatman said they would like to start as soon as possible.

Building will be used for storage purposes only and there will be no livestock in this building.

Mr. Freatman said there will be four (4) overhead doors on the north side of the building facing the other buildings.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to declare **negative declaration under SEQR** on application of Paul and Roberta Freatman. Unanimously approved, motion carried.

A motion was made by Mr. Robinson and seconded by Mr. Smith to **approve** application of Paul and Roberta Freatman, 3699 North Ridge Road, Lockport 14094, for an Area Variance to permit applicants to construct a barn with dimensions of 60' by 150' upon premises commonly known as 3782 North Ridge Road, Lockport approximately 40' from the east side lot line with stipulation there is to be no livestock housed in this building. Unanimously approved, motion carried.

**(03-13-08) MICHAEL and BRENDA GROSS**, 19 Fairgreen Drive, Amherst, N.Y. 14228, have submitted the following: Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement and copy of portion of town map showing their property at 4664 Green Road, Lockport 14094.

Mr. Gross said they would like to place future home approximately 35 feet farther back (total 160') from the road right-of-way, whereas the Zoning Ordinance does not permit structures farther from the road right-of-way that 125 feet. The future barn would be another 35 feet farther back. He said the lot is 711' in width. The future home would be at least 400' away from any future home on either side. He said he feels the proposed set back will not change the character of the neighborhood.

Public Hearing open:

Larry Hiller, 4638 Green Road, Lockport 14094, said his property is the third or fourth lot north of Mr. Gross and feels houses should be kept in line and not further back because of privacy in back yard.

Public Hearing closed.

Counsel said there are 3 lots in between applicants and Mr. Hiller's.

Mr. Hiller asked if by placing the house farther back, would this be setting a precedent?

Mr. Gross said the proposed barn would be farther back than his home.

Building Inspector said the barn would have to be farther back than the house and would be quite a distance from Mrs. Hiller's house. Barn will be approximately 210' from the road, 50' from the house and must be at least 100' from the property lines.

Mr. Gross said they have two horses now and the barn will have four to five stalls. He said the house will be two story, 40' by 36' with a two car attached garage 24' wide. He said he will follow the code for the barn. No variance needed for the barn.

Mr. Joseph Critelli, who has purchased some of the Burcyk property on the west side of Green Road, where Gross property is located, appeared at this time, and said it will be hard to sell some of the lots near Mr. Gross's because of the proposed setback of his future home.

Board members: no concerns

A motion was made by Mr. Smith and seconded by Mr. Robinson to declare **negative declaration under SEQR** on application of Mr. and Mrs. Gross. Unanimously approved, motion carried.

A motion was made by Mr. Robinson and seconded by Mr. Allen to **deny** Area Variance to Michael and Brenda Gross to permit applicants to construct a residence 160 feet from the road right-of-way. As not all board members voted "aye", secretary was requested to poll the board:

|               |   |                                  |
|---------------|---|----------------------------------|
| Mr. Robinson  | - | "aye" for denial of the variance |
| Mr. Bechtel   | - | "aye" for denial of the variance |
| Mrs. Kroening | - | "no" for denial of the variance  |
| Mr. Smith     | - | "no" for denial of the variance  |
| Mr. Allen     | - | "aye" for denial of the variance |

Three "ayes" for denial, 2 "no's" for denial - Area Variance is denied.

**(08-23-07B) JASON and ANN DUMAIS**, 3473 Upper Mountain Road, Sanborn, 14132, were present at this meeting for a rehearing for an Area Variance to permit applicants to construct a residence 475 feet from the road right-of-way upon premises located on the west side of Shawnee Road between Upper Mountain Road and Lower Mountain Road.

The original Public Hearing was held in September 2007 and variance was denied at 475 feet and modified to 375 feet, which was agreed to by board members and applicants.

Counsel explained the reason for the rehearing. Due to an error in his office, the wrong address was published in the newspaper. He apologized for the inconvenience.

Mr. Dumais said they purchased the property, approximately seventeen (17) acres in 2003, but due to financial reasons, were not able to build their home at that time and since that time the ordinance has been amended in that the maximum setback as of August 2004 is 125 feet. He said there is a ditch in the front of the property about 100' from the road right-of-way.

Some members of this community appeared at this meeting and said they knew nothing about this request for an Area Variance until they received this Notice of a rehearing and said they would have been at the September meeting if they had known about it, but because of the error in the address, did not appear.

Mr. Dumais mentioned the error in the Public Hearing Notice at the September meeting and why did it take seven months to fix the error? He said they have incurred several costs such as the builder and engineer, waiting seven months to build their home.

Public Hearing open:

Stephen McMullen, 5022 Shawnee Road, Sanborn 14132, said he was not aware of the public hearing in September 2007. He feels Mr. Dumais should stay in line with existing homes. There are no fences, doesn't want a house that far back and look into their back yard, obstruct the view and might devalue his own home. He said he lives two houses south of Mr. Dumais' property, and is one of the closest.

Timothy Perry, 5007 Shawnee Road, Sanborn 14132, feels all the homes should have the same setback. He referred to a previous case where a person was denied building a house on the hill. Do not want precedent changed, keep the houses all the same setback. Mr. Perry said he doesn't know why they want to build so far back.

Roger Warren, 4969 Shawnee Road, Sanborn 14132, said he doesn't want people building behind other people's homes. He feels 200' setback is okay. It could devalue his property with people looking at their back yards.

Karl Hildebrandt, 5041 Shawnee Road, Sanborn 14132, said it looks better when houses are in a row. 125 feet back as compared to 375' back is a big difference. How far from the road right-of-way will Mr. Dumais be? The ditch is about 300' from the road right-of-way. Why do they have to go so far back?

Matthew Robins, 4991 Shawnee Road, Sanborn 14132, said all of the homes should be in line and not so far back.

Public Hearing closed.

It was asked, how far back is the ditch?

Mr. Burch said it is about 264' back from the road. He said it is far enough back that other houses have been built in front of that ditch.

A letter was received from Gregg and Carla Morrell, 5010 Shawnee Road, Sanborn 14132, read by Counsel, who are the property owners directly adjacent to applicants on the south side of subject property, stated they have "no objection to such request".

Mr. Dumais said they, Mr. and Mrs. Morrell, are the only ones that can see his property.

Building Inspectors are concerned about crossing of the ditch by heavy equipment such as a fire truck if necessary. Applicant will need a good driveway to allow for fire apparatus.

Board members had no further concerns.

Counsel said the board members might like to take a look at the subject property. Perhaps if owners would put up buffers, that might alleviate some of the concerns of the neighbors.

Mr. Dumais said they could not afford to build their home in 2003. He said the septic system would be put on the side to the front of the property. Land is high in the back. Perk test was done in 2003 and passed in the back but will not pass in the front of the ditch.

A motion was made by Mr. Smith and seconded by Mr. Robinson to declare **negative declaration under SEQR** on application of Mr. and Mrs. Dumais. Unanimously approved, motion carried.

At the September 2007 Public Hearing meeting the application for setback of future home at 475' from road right-of-way was denied and approved at 375'. The applicants and board members agreed to the modified figure of 375'.

A motion was made by Mr. Robinson and seconded by Mr. Allen to **deny** Area Variance to permit applicants to construct a residence 475' from the road right-of-way upon premises located on the west side of Shawnee Road between Upper Mountain Road and Lower Mountain Road. As not all board members voted "aye", secretary was requested to poll the board:

|                 |       |                                |                            |
|-----------------|-------|--------------------------------|----------------------------|
| Mr. Robinson -  | "aye" | for denial of variance at 475' | from the road right-of-way |
| Mr. Bechtel -   | "no"  | "                              | "                          |
| Mrs. Kroening - | "aye" | "                              | "                          |
| Mr. Smith -     | "no"  | "                              | "                          |
| Mr. Allen -     | "aye" | "                              | "                          |

Application for Area Variance is denied – 3 "ayes" and 2 "no's"

A motion was made by Mr. Smith and seconded by Mr. Bechtel to **approve** Area Variance to permit applicants, Jason and Ann Dumais, to construct a residence 375' (same as previously approved in September 2007) from the road right-of-way on property located on the west side of Shawnee Road between Upper Mountain Road and Lower Mountain Road. Mr. and Mrs. Dumais agreed to the 375' setback. As not all board members voted "aye" for approval of setback at 375' from the road right-of-way, secretary was requested to poll the board:

|                 |       |   |
|-----------------|-------|---|
| Mr. Robinson -  | "aye" | for approval of residence setback at 375 feet |
| Mr. Bechtel -   | "aye" | for approval " " " " " "                      |
| Mrs. Kroening - | "aye" | for approval " " " " " "                      |
| Mr. Smith -     | "aye" | for approval " " " " " "                      |
| Mr. Allen -     | "no"  | for approval " " " " " "                      |

Application for Area Variance approved – 4 "ayes" and 1 "no"

Mr. McMullen asked "why can one applicant go back several hundred feet and another asked for 35 feet and turned down?"

It was said each application is addressed on its own merits.

Mrs. Kroening said the regular May Zoning Board meeting will be held on the 19<sup>th</sup> at 8:00 P.M. following the Planning Board meeting at 7:00 P.m. because of the holiday weekend.

REPORTS:

Building Inspector: going to be working on cleaning up debris from some of the properties in the town.

Board members:

Mr. Robinson mentioned some properties that need cleaning up in the North Ridge Road area as follows:

Shirley Urtel, Kelly Ganshaw, Leonard Sax, Deline property

Town Board member:

Mr. Blackman asked about the status of the Luff property on North Ridge Road?

Mr. Burch said he had written letters to the owner of subject property with no response.

A motion was made by Mr. Robinson and seconded by Mr. Bechtel to adjourn at 9:00 P.M.

Respectfully submitted,

Marjorie E. Meahl, Rec. Secy.

Minutes approved: \_\_\_\_\_

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