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**Town of Westerlo  
Zoning Board of Appeals  
Westerlo, NY  
ZBA Town of Westerlo  
Zoning Board of Appeals  
Westerlo, NY  
ZBA Meeting**

## **Meeting**

### Minutes

Date: November 16, 2022

Location: Westerlo Town Hall

ZBA Members: Chairman Richard VanIlderstine, Guy Weidman, George Spahmer, James Gallogly, Sean Leary

Town Attorney: George McHugh- present

Town Supervisor: Matthew Kryzak- not present

Code Enforcement Office: Jeffry Pine - present

Non-members present: Kim, Maureen and Bradley Winnie , Mr. Tom Crounce and Solar Representative, Louis and Angelica Berchilli, Kathy Bishop and Brother, Town Board Member Lorraine Pecklak, Claire Marshall ZBA Clerk and Town Clerk Karla Weaver

### **MINUTES**

September and October meeting minutes. ZBA member Spahmer made a motion to approve the September and October meeting minutes. ZBA member Weidman seconded; all in favor motion carried.

### **OLD BUSINESS**

#### **PUBLIC HEARING CROUNCE VARIANCE V-22-4**

ZBA Chair VanIlderstine made a motion to open the Public Hearing on the Crounce Variance (V 22-4) at 7:01 pm. ZBA Member Gallogly seconded; all in favor motion carried.

Mr. Crounce explained he is trying to have solar panels installed on his roof by PV Plug. Neighbors have been notified and none have appeared this evening. Mr. Pine indicated the permit is ready to go, there are no issues on his end. With no other comments or concerns, ZBA Member Weidman made a motion to close the Crounce Public Hearing at 7:03 PM. ZBA Member Spahmer seconded; all in favor motion carried.

#### **APPROVAL OF CRONCE VARIANCE V-22-4**

ZBA Member Weidman made a motion to approve the Crounce Variance V-22-4 for rooftop solar. ZBA Member Leary seconded; all in favor motion carried.

#### **PUBLIC HEARING WINNIE VARIANCE V-22-3**

ZBA Chair VanIlderstine made a motion to open the Public Hearing on the Winnie Variance (V 22-3) at 7:05 PM. ZBA Member Weidman seconded; all in favor motion carried.

Bradley Winnie spoke on behalf of the applicant explaining that they need a variance to separate the apartment from the main parcel. All abutters have been notified. Mr. VanIlderstine

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indicated he heard back from ACPB who had no issues. With no other comments or concerns, ZBA Member Gallogly made a motion to close the Winnie Public Hearing at 7:07 PM. ZBA Member Leary seconded; all in favor motion carried.

### **APPROVAL OF WINNIE VARIANCE V-22-3**

ZBA Chair VanInderstine made a motion to approve the Winnie Variance V-22-3. ZBA Member Leary seconded; all in favor motion carried.

This is a multistep process for the Winnies, they will have to go back to the Planning Board next.

### **PUBLIC HEARING BISHOP VARIANCE V-22-2**

ZBA Chair VanInderstine made a motion to open the Public Hearing on the Bishop Variance (V 22-2) at 7:10 pm. ZBA Member Weidman seconded; all in favor motion carried.

CEO Pine explained that a past owner of the Bishop property created three lots out of one prior to zoning. It was a non-conforming pre-existing lot. In 2003, the previous owners changed the lot lines which greatly improved the lot but because it was done after zoning, they should have gone for a variance. The lot sizes haven't changed, each lot has approximately 2 acres and better configured. Before and after maps were provided to the ZBA for their reference. The applicant is not looking to build at this time; there is a camper on the property currently. There is an existing well and septic that have been tested per the new owner. CEO Pine indicated the applicant requests that the ZBA approve the new configuration. This would enable them to do whatever is allowed in that zoning district as long as they maintain modern setbacks. The Attorney advised that without the variance, they could still build as it would convert back to the pre-existing non-conforming lot. The variance is for approving the lot line adjustment done in 2003 which would give them more road frontage.

The ZBA heard from adjacent neighbor Lou Berchielli against the approval of the variance. He read his recollection of the history of the property and advised of Supreme and Appellate court decisions. Mr. Pine responded to a few comments that the neighbor made. A non-conforming use is not house. What's non-conforming is the lot which was legal because it was created before zoning. The septic is not approved and shouldn't be used. If a house was being built, an engineer would be needed to address the septic. The well can be tested and may meet modern quality and quantity. Right now, the travel trailer needs a special use permit before the Planning Board as the only use on the property however, he allowed the applicant to set the travel trailer up while they were going through the variance process. RVs are not allowed to be lived in year-round as stated in the zoning law. Mr. Pine believed if the variance is not granted, it would just convert back to the previous map and they can come in and put their RV on what's left. Mr. Pine asked for a copy of the Appellate court decision which he has yet to receive from this neighbor.

Ms. Bishop mentioned the property is for her brother. Mr. VanInderstine indicated if the variance is not granted, it will not hurt the Berchielli's, it hurts the applicant a little, but will really affect the Mattot neighbor. Ms. Mattot who was not present and did not return the certified signature card. He showed Mr. Berchielli the two maps and explained that the lot line adjustment in 2003 was never approved. If the lot line adjustment isn't approved by the Planning Board, Mr. VanInderstine indicated the property would turn it back to what it was originally, the original map. Mr. Weidman indicated the ZBA is only granting a relief of 1 acre and 13' from the 200' road

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frontage so they can go before the Planning Board for the lot line adjustment as shown on the second map. Mr. Pine indicated the variance allows the parcel to be used as a conforming lot which would mean they would have to meet all of the current setbacks and laws of the town in order to build on. Discussion ensued regarding the difference between a non-conforming use and a non-conforming lot. The Berchielli's believed the ZBA was incorrect in that a mobile home could not be installed on the parcel in question nor a house be built based on the Appellate court decision. The Town has no documentation of this decision.

The Board mentioned leaving the Public Hearing open for the November 28<sup>th</sup> meeting to allow the Berchielli's time to produce their missing legal documents. Ms. Bishop's brother who is staying on the property responded to some of the comments that the Berchielli's made. He indicated he has made vast improvements to the property and understands the requirements to move forward.

ZBA Clerk Marshall mentioned the abutters have been notified however, the Town did not receive back two certified signature cards.

CEO Pine indicated the Supreme Court vacated the ZBA decision for procedure; however, the applicant at the time could've come back and followed the process step by step.

ZBA Chair VanInderstine made a motion to leave the Public Hearing open to allow time for the Berchielli's to produce potential missing legal documents. ZBA Member Weidman seconded; all in favor motion carried. The Public Hearing will continue on November 28<sup>th</sup>.

## **NEW BUSINESS**

### **ADVERTISE & RESCHEDULE DECEMBER MEETING**

ZBA Chair VanInderstine indicated the December meeting needed to be rescheduled due to the holiday. Mr. VanInderstine made a motion to change the ZBA meeting from Dec. 26<sup>th</sup> to Dec. 12<sup>th</sup> at 7 PM. ZBA Member Leary seconded; all in favor motion carried. ZBA Chair VanInderstine made a motion to authorize the ZBA Clerk to advertise the change of meeting date from Dec. 26<sup>th</sup> to Dec. 12<sup>th</sup>. ZBA Member Spahmer seconded; all in favor motion carried.

## **OTHER COMMENTS**

Discussion ensued regarding the Berchielli's proposed legal documents, specifically the Supreme Court and Appellate Court documents.

Mr. VanInderstine expressed concern for Ms. Mattot's property and what this could mean if the variance isn't granted. He will contact her to make her aware of what is going on.

No other comments were heard.

## **CLOSURE OF MEETING**

ZBA Chair VanInderstine made a motion to close the meeting at 8:23 PM. ZBA Member Spahmer seconded; all in favor motion carried.

Respectfully submitted,

Claire Marshall  
ZBA Clerk