

September 19, 2002
Zoning Board of Appeals Minutes
Southwest Community Center

Chairman: Randy Pratt
Board Members: Greg Auleta, Robert Baker,
Brad Livesey, Greg Mills

Call to Order

The meeting of the Town of Oswego Zoning Board of Appeals was held on Thursday, September 19, 2002. Randy Pratt, Chairman, called the meeting to order at approximately 7:25 PM

Attendance

Those in attendance were:

Randy Pratt, ZBA Chairman
Kevin Caraccioli, Legal Advisor
Robert Baker, ZBA Member
Stephen Greene Jr., Legal Advisor
Brad Livesey, ZBA Member
Shelley Rahn, ZBA Secretary
Greg Mills, ZBA Member

Greg Auleta, ZBA Member-Absent
Marcella Gibson, ZEO-Absent
Don Down, CEO-Absent

Board members agreed to revise the agenda so that the Public Comment Session would be the first order of business.

Public Comment Session

Mr. Don Smith approached the board to voice his concern with the John Bush Automotive property. Mr. Smith distributed a letter to ZBA members that was addressed to the ZBA and the Town Council. Mr. Smith stated he has voiced his concerns to the Town of Oswego Council. The council sent him to the ZBA. Mr. Smith feels this is a safety issue. He resides on the East side of the Mr. Bush's property. Mr. Smith stated it is very difficult for him to get in and out of his driveway, as he cannot see well enough to safely exit his driveway on to Route 104. He also stated in the winter he has to get out of his car and use his hands to shovel the snow banks down far enough so he can see over the banks. Mr. Smith he has spoken with Mr. Bush asking him to resolve the issues he is complaining about, however, little has been done. Mr. Smith distributed pictures to the board for them to review. Mr. Smith is asking the ZBA to look into this matter to resolve the problems he is highlighting.

Stephen Greene Jr. interjected at this point; with regard to the factual material Mr. Smith produced, Mr. Green felt it would prejudice the board should the members of the public who are present follow the proper procedure and file the appropriate paperwork for the ZBA to look into the facts. He felt that at this point, any more factual material being submitted to the board would create prejudice and all of the board members would have to be replaced at such a time as the paperwork comes before the board requiring the ZBA looks into this. He recommended ZBA members not look at anymore factual material, however the members of the public could come before the board to speak, but warned members against reviewing any submissions made at this point. Mr. Greene enumerated the procedure set forth in the Town of Oswego Land Use and Control Ordinance to get this complaint in the proper form for

consideration.

Randy Pratt advised ZBA members that Mr. Greene would be Legal Advisor for this matter as ZBA Legal Advisor; Kevin Caraccioli has a conflict of interest in the particular case. Mr. Greene is recommending Mr. Smith follow the procedure set forth in the Land Use Ordinance. Under the General Information section of the Zoning Statute, Article V, Section C (d) on page 6 states "All appeals and applications made to the board shall be in writing. To be set forth on forms prescribed by the board." Mr. Greene also pointed out a \$50 non-refundable fee must be paid to the Town to get this into the system. All items must be submitted to the Town Clerk.

Randy Pratt brought ZBA members up to date on this issue. He stated that the last time this issue was brought before the ZBA, it was referred to the Town Council. The Town Council has referenced the aforementioned statute, advising the Zoning Enforcement Officer must act upon the complaint and file a final report. The next step is to file an appeal to ZBA if the complainant does not agree with the ZEO's decision. Mr. Pratt recommended Mr. Smith file the appropriate paperwork so that the ZBA can hear the complaint. Mr. Pratt also pointed out to the members of the public this was the first time he could recall any ever using the procedure. Mr. Pratt recommended all ZBA members return the materials Mr. Smith provided at this meeting. Mr. Pratt thanked Mr. Smith for his time and advised him his comments would be included in the minutes for this meeting.

Mr. Paul Connolly stepped forward to address the ZBA. He lives across the street from Bush Auto. He stated he attended the August ZBA meeting. He is waiting to find out what exactly what Mr. Bush is permitted to do on his property. He has been told that Mr. Bush's business has been grand fathered in; he agrees that the garage was grand fathered in. He stated Bruce Wells was permitted to sell used cars on the property with a limit of ten (10) cars. Mr. Connolly stated Mr. Bush was grand fathered for the garage only.

Mr. Greene told Mr. Connolly the same procedure applied to his complaints as well. Mr. Connolly was advised to file his complaint, in writing, pay the \$50 fee with the Town Clerk so that the ZBA can review the material and put it on the agenda for the next meeting. Mr. Pratt advised Mr. Connolly to file before the 10th of October in order to be put on the meeting for next months meeting. Mr. Pratt personally apologized for sending Mr. Connolly to the Town Council and delaying the process. Mr. Pratt also stated he was unaware of this procedure until now. Mr. Pratt stated that he hoped the matter could be resolved in an expedient manner.

Mr. Connolly wondered why the ZEO was able to issue him a ticket for operating a business out of his home without a permit but the ZEO did not issue a ticket to Mr. Bush. Mr. Pratt advised the ZBA has nothing to do with that particular issue. Mr. Connolly wanted to know whom Marcella worked for. Mr. Pratt stated the Town Supervisor, Vicky Mullen was ultimately her supervisor. Mr. Pratt explained to Mr. Connolly the role the ZBA plays in the town. Mr. Pratt again referred Mr. Connolly to procedure set forth in the ordinance.

Mr. Connolly stated that he has retained an attorney with regard to this matter. His attorney had advised him to see how far he could get at this meeting and report back to him. Mr. Pratt asked Mr. Connolly to work within the system and give the system a chance to work. Greg Mills stated that the ZBA has to work within the formal process Mr. Greene has pointed out is set forth in the Zoning Ordinance.

Mr. Greene again advised Mr. Connolly to make a formal complaint and pay the \$50 fee to be heard by the ZBA at the next meeting. Mr. Connolly was advised he must file the paperwork prior to October 10, 2002 so that the ZBA members are allowed enough time to review the package of materials.

Mr. Connolly stated that he is upset with the lack of procedure. He is upset with the fact he has been issued a ticket when Mr. Bush is operating under the same circumstances and has not been fined. He feels he is being harassed. It is his hope that this can be resolved before someone gets injured or killed.

At approximately 8:00 p.m. the Public Comment Session was closed.

Acceptance of Minutes

Board members reviewed and discussed the minutes from August 15, 2002 minutes and made revision to the following section:

Mr. Pratt wanted to strike the entire second paragraph of the second page. Greg Mills made a motion to accept the minutes as corrected. Robert Baker seconded the motion. All ayes motion carried.

Public Hearing Application #2002-41/John and Joann Wall

At approximately 8:05 p.m. the Public Hearing for Application #2002-41/John and Joann Wall was opened.

Mr. Wall stated he and his wife have opened a respiratory equipment and supply company they have opened up. They are applying for a special permit to erect a sign and special use permit to operate the company from their home. Joann Wall stated they were asked to provide a signature sheet from the neighbors, and information on the storage building they planned to erect, and revised blueprints. Mrs. Wall stated these items were submitted to the ZBA for review. Randy Pratt stated for the record, the Public Hearing was advertised in the newspaper of record. At approximately 8:10 p.m. the Public Comment Session was opened. No one was present to comment. At approximately 8:11 p.m. the Public Comment Session was closed. At approximately 8:11 p.m. Open Board Discussion was opened. Brad Livesey asked if the applicants had provided a redesigned plan for the sign. Mr. Wall stated they had provided a new, scaled down plan for the sign.

Randy Pratt stated the ZBA had requested a more detailed blueprint giving the location for the sign and an updated survey map. Mr. Pratt asked the applicants if the dimensions on the new map they submitted were accurate. The applicants stated the dimensions were accurate. Mr. Pratt stated the Planning Board had review the application and Planning gave their approval of the application pending the Town of Oswego's Fire Chief's approval. The Fire Chief had provided a document voicing his willingness to work with the applicants.

Randy Pratt asked the applicant what the intention the applicants had for the sign should the business no longer be running. The applicants stated they would take the sign down. This was made a condition of the permit. Greg Mills stated the condition would be that the permit would only reside with the applicant and be non-transferable to anyone else. Randy Pratt wanted to know if the sign placement would allow ample room for snow removal. The applicant stated it was not a danger to other traffic according to the Town Highway Supervisor.

Randy Pratt brought up the issue of lighting for the sign. He expressed his desire to include in the permit the condition that the light is fixed upon the sign and not glare into other areas. The board agreed.

Randy Pratt asked about the storage shed. Brad Livesey stated apparently there weren't any problems with storing the oxygen cylinders in the shed. The shed is to be secured and ventilated. Randy Pratt wanted to know if there was a State Permit needed for this storage. Mr. Wall stated no, unless he was carrying more than 750 pounds of oxygen on site. Randy Pratt expressed his desire to include a condition in the permit for the applicants need to follow up with any state permits needed for the business.

At approximately 8:30, Brad Livesey made a motion to approve the application subject to the conditions set forth:

1. The permit for the sign and business are non-transferable.
2. Only the sign is illuminated. Lighting will not glare into other areas.
3. The applicant will comply with all Federal, State and Local Laws.

Robert Baker seconded the motion. All ayes motion carried. The Public Hearing was closed.

Public Hearing Application #2002-61/Daniel Demm

At approximately 8:40 p.m. the Public Hearing for application #2002-61/Daniel Demm was opened.

Daniel Demm stated he is applying for an area variance to erect a modular home at 1542 Rathburn Road. He stated he has supplied an updated survey map, plot plan and signature sheet for ZBA review. He is requesting a variance, as his lot is not wide enough to accommodate the size of his house with the setback size required by the current Land Use Ordinance. At approximately 8:41 the Public Comment Session was opened. No one was present to comment. At approximately 8:42 the Public Comment Session was closed.

Randy Pratt confirmed the Public Hearing was advertised in the newspaper of record. Mr. Pratt confirmed that Mr. Demm has supplied all of the information requested by the ZBA (public notification, updated survey map, plot plan, letter from Jan Gibson confirming his knowledge of Mr. Demm's intent.).

Mr. Pratt stated the applicant is requesting a variance of 15.52-foot area variance on the south side of the property and a variance of 15.75-foot area variance on the north side of the property. At approximately 8:55, Randy Pratt opened the floor for board discussion.

Randy Pratt asked the applicant to confirm that a well existed on the north side boundary of the property. Mr. Demm stated it was and this is indicated on the map he provided. Kevin Caraccioli asked if it was an active well. Mr. Demm stated it was not and that the well is spoiled. Brad Livesey asked if anyone was drinking the water. Mr. Demm stated no. Mr. Caraccioli wanted to know where the well is in relation to the proposed septic system, however since Mr. Demm stated the well is inactive, the issue is moot. Robert Baker measured the drawing to confirm the proposed septic system was well within 100 feet of the well. Kevin Caraccioli stated it wasn't a concern as long as the well was inactive however, if the well were reactivated it would definitely become a problem. Brad Livesey stated it was not a question since there was municipal water on the property. Mr. Livesey asked if the well could be filled to satisfy the situation. Mr. Demm agreed to do so.

Randy Pratt advised Mr. Demm the Town of Oswego Planning Board had made a motion not to approve the application. Mr. Pratt advised Planning questioned if the house was too close to the boundaries, the septic system was too close to the Gibson boundaries, they suggest the house be turned to satisfy these issues, the applicant needed to provide a schematic drawing of the driveway location and all existing buildings on and surrounding the property. Randy Pratt stated basically all of the information recently submitted to ZBA was not available to Planning. Greg Mills stated Planning acted on the application based upon the information available to ZBA last month. Greg Mills stated that although he could not speak for them, Planning might have made a different determination if they had been provided with the new information. Randy Pratt asked ZBA members if they wanted to send this application back to Planning for their review or go forward. Greg Mills stated he wanted to go forward. Brad Livesey stated he thought the Planning Board would take a look at this information and refer it back to ZBA. Randy Pratt also felt the issues the Planning Board brought forward were satisfied with this new information. Mr. Pratt requested the ZBA secretary draft a letter to

Planning advising of the determination based upon the new information provided by the applicant. Kevin Caraccioli stated the ZBA was free to go ahead with making a decision, as the Planning Board's role was an advisory position. Greg Mills stated he didn't feel ZBA was overruling Planning Board's decision; ZBA is acting with updated information allowing ZBA to make a more qualified decision. Randy Pratt stated he would address each of Planning's concerns.

1. The house is too close to the boundaries. Mr. Pratt stated this was satisfied as the immediate neighbors were notified of the applicant's plan and did not appear before the ZBA to dispute. Kevin Caraccioli pointed out that both neighbors adjacent to the property specifically consent to the placement of the house.
2. Septic is too close to the boundaries. Mr. Pratt noted that there is an official stamped engineering drawing for the placement of the septic system with a plot plan.
3. Could the house be turned sideways? Mr. Pratt stated this was of no benefit. The board members agreed.
4. Size of the house. Mr. Pratt stated this size was adequate for the family's situation.
5. Schematic drawing of the driveway location. These drawings are on file.
6. Well ion the north property line boundary is too close to septic. The applicant has agreed to fill in this well.

Mr. Pratt stated he believed this resolved all of the Planning Board issues. Greg Mills noted that the application number for the building permit is incorrect. Randy Pratt noted that he was changing the number on the official ZBA copy of the application.

1. The existing well on the north side boundary of the property is to be filled in.
2. The applicant is to follow all Federal, State and Local Laws. Brad Livesey seconded the motion. All ayes. Motion carried. The Public Hearing was closed.

Open Board Discussion

Randy Pratt advised the ZBA budget for 2003 has been cut, however funds would still be available for training. Brad Livesey stated he would be happy to waive his attendance fee. Randy Pratt stated the alternate positions are still available; those selected for these positions would be paid only if they are actually filling in for a ZBA member.

Randy Pratt advised ZBA members he would not be in attendance at the next ZBA meeting. He is requesting Greg Mills fill the chair position at that meeting. Mr. Mills stated he would like to wait to see what happens next month.

Randy Pratt stated paperwork has been recently located with regard to the Bush property. Once the complaint has been received, this will be distributed.

Adjournment

At approximately 9:30 p.m. Greg Mills made a motion to adjourn the September 19, 2002 Zoning Board of Appeals meeting.

Respectfully submitted,

Shelley A. Rahn
Town of Oswego Zoning Board of Appeals Secretary