

ZONING BOARD OF APPEALS

TOWN OF HOPEWELL

2716 County Rd 47 – Canandaigua – NY 14424
585-394-0036 ext. 8 – www.townofhopewell.org

Minutes – June 15, 2020

Present: Chairman Rich Vienna, Grace Perry, Stacey Gray, CEO Norm Teed, Lance Brabant (MRB), Bill Grove, Shawn Cotter, Jeff Wood, Jimmy Kramer, Tim Vaughn, Steven Sciaratta, Narina Schulz

Phone Call-in: Terry Smith, Joseph Furmansky, William Caroscio, Frank Hamlin

Absent: Mickie Kelly, Robert Price

WORKSHOP 6:30 p.m.

Chairman Rich Vienna opened the meeting at 7:00 p.m.

General Business: May 18, 2020 Minutes

Grace Perry moved to approve May 18, 2020 minutes as presented, seconded by Stacey Gray. Motion carried unanimously.

Privilege of the Floor: No one from the public spoke.

Chairman Vienna opened the Public Hearing for the Emily Jeffery variance applications.

Public Hearing:

Clerk Read aloud Public Hearing notices for PZ-2019-038, PZ-2019-039, PZ-2019-040 – Attached to final minutes.

Tim Vaughan - 3464 Lincoln Hill Rd – read a written statement aloud. (Statement attached to minutes.)

Jeff Wood – 3495 Lincoln Hill Rd – Purchased his home in 2005 – Mr. Wood stated he has worked hard to keep his home looking nice and has done improvements to the home, he added he has great neighbors and has the space he wanted. Mr. Wood stated he has issues with the proposed driveway for the Emily Jeffery property being shoved in between the current houses on Lincoln Hill Rd., and stated it will devalue his home, character of the neighborhood and the driveway is in an unsafe spot.

Mr. Wood presented videos from February 2020 showing the proposed driveway while he is driving down the road. The purpose of the video is to show the line-of-site concerning the existing 30ft. driveway access. He also submitted photos concerning the properties nearby the Emily Jeffery property, adding, currently Mr. Malvaso's home is in direct line-of-site with automobile lights, which will increase with the proposed subdivision.

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Mr. Wood stated the variances are extreme and the proposed properties should have the 150' lot width as required by Zoning Code, since there are other options to develop this particular property and it is unfair to box Mr. Sciarratta's home in with other parcels.

Steven Sciarratta – 3477 Lincoln Hill Rd – Mr. Sciarratta stated he purchased his home in 2007 from Don and Emily Jeffery. Mr. Sciarratta stated the Jeffery's maintained 10 acres of the property after selling the home to him. He stated that conversations took place between himself and Mr. Jeffery and Mr. Jeffery was going to offer Mr. Sciarratta the First Right of Refusal to buy the property when the time came that he was able to get his feet under him financially. He further added that at one time, Mr. Jeffery had shown the deed which included the 30ft between his home and Jeff Wood.

Mr. Sciarratta stated he has mowed and maintained the 30ft. stretch of land at no cost to Mr. Jeffery for the last 13 years in good faith. He believes the 30ft stretch of land was intended to be used for utility easements and it should not be turned into a driveway flag lot. He believes snow removal for the proposed driveway will be an issue for his and Mr. Wood's properties, and the driveway will be a short distance from his patio and home.

Mr. Sciarratta stated prior to purchasing his home, he looked into Hopewell Zoning Law and it stated that 150' frontage was necessary for a driveway, adding he may have re-negotiated what he paid for the house had he known a driveway was going in next to him and that Mr. Jeffery would be profiting from the sale of the land surrounding area of his home, if the First Right of Refusal does not come to him.

Mr. Sciarratta stated there may become bad feelings between himself and whomever ends up developing the land, adding he would not legally block this application; however, he would likely build, develop and landscape to block any homes behind him. Mr. Sciarratta concluded that the development is not for the betterment of the neighborhood but for the developers, and that placing the maximum number of houses and driveways on this property is excessive.

James Cramer – 3517 Lincoln Hill Rd. – Stated variances are not set in place to make it easier or more profitable for landowners. Mr. Cramer stated with this particular application the request for three variances is so the owners can maximize their profitability and that is not the intended purpose for variances, and the end goal of the Jeffery's is to profit off their property. Mr. Cramer added, he is not saying the applicants should not make a profit, but that they should not make it when it comes to substantial variances.

Mr. Cramer stated one house on 13 acres would be preferable, or one variance for two homes on the Jeffery parcel. That would be more tolerable for the existing families in the neighborhood.

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Narina Schulz – 3460 Lincoln Hill Rd.– Submitted documentation to the Board. (Attached to minutes).

Ms. Schulz briefly outlined the documentation that was submitted to the Board for review:

1. Three blind driveways on the lower hill would be a line-of-site safety hazard and create an undesirable change to the neighborhood.
2. Intersection roadways cause greater amount of traffic accidents. Their neighborhood is rural and has no sidewalks and therefore the road-way is used for walking or riding bicycles.
3. One driveway for four homes would be more desirable and safer for the neighborhood.
4. The alleged difficulty was self-created by the owners who chose to sub-divide the remainder of their property.
5. Requests the Zoning Board to review of the Ontario County Planning Board, and Canandaigua Watershed Manager remarks.
6. The 10-acre parcel is not landlocked and therefore is not entitled to variances by Town of Hopewell Zoning Law.
7. One or two homes with a shared driveway would be more appropriate.
8. Town should not overturn its own law by allowing variances.

Lance Brabant of MRB gave the opportunity for the Call-In's to speak their comments during the Public Hearing.

CALL-IN

Joseph Furmanský - 3486 Lincoln Hill – Stated he stands with all comments that neighbors have made pertaining to the Jeffery variance applications, and is in agreement with them.

Terry Smith – 3455 Sandy Cove – Stated there are major flooding issues with water run-off from County Rd. 18 and the FLCC campus, and is concerned about any developments on Lincoln Hill Rd. that may contribute with the current water run-off situation. Currently the residents of Sandy Cove are working with the Town of Canandaigua and Ontario County Watershed manager, Kevin Olvany, who are trying to address run-off onto East Lake Rd.

Mr. Smith stated currently water run-off does not divert to Fallbrook Creek or the wetlands and there is significant concern from the residents of Sandy Cove of additional run-off from future developments.

William Caroscio - 3457 Sandy Cove – Stated he is in agreement with Terry Smith, and before there is any future development, potential water run-off should be addressed.

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Frank Hamlin – 3470 Lincoln Hill Rd – Stated the applicant needs to substantiate any claims for requested variances; the parcel is not land-locked, the property can be sold as an individual lot or two lots with a shared driveway, and the alleged difficulty has been self-created by the owner by selling off previous parcels of land.

Lance Brabant stated there were no other on-line participants for tonight's meeting.

Bill Grove – Engineer for Jeffery Project

Mr. Grove responded to the comments concerning the comments against the application.

1. The proposed subdivision does not change the character of the neighborhood.
2. There is another subdivision that recently took place up the road from Lincoln Hill Rd. which was subdivided into four lots with the smallest lot being 2.476 acres.
3. 3517 Lincoln Hill Rd is a flag lot, with approximately 70ft. of road frontage with a 600ft. length of driveway, which directly abuts Lot #4 of the Jeffery project.
4. 3531 Lincoln Hill Rd. has driveway length of 750 ft.
5. All of the proposed lots for the Jeffery application are over 2.5 acres.
6. Nearest neighboring house 3477 Lincoln Hill Rd. to closest proposed house is 230 ft.
7. Current houses across the street are in closer proximity than the proposed houses to be developed.
8. Less than a mile within Lincoln Hill Rd., in the Town of Hopewell, there are at least 15 properties with less than 150ft. road frontage.
9. If the property was to be sold and used as a single dwelling, there would be nothing to prevent anyone to using the existing 30ft. swath area as a driveway.
10. Current water run-off will be minimal
11. Other options for the property would be to do nothing, farm it, or do a cluster development with 9-10 lots with one shared access road, which is a permitted use that would not require any variances, however it would not be in the character of the neighborhood and therefore the applicant would like to avoid that proposal.
12. The owners have the right to re-coop some of their investments with the property.

Lance Brabant gave a brief over-view for the Jeffery applications and time-line. Prior to COVID-19 The Board of Appeals was in the process of reviewing the variances. The Planning Board had continued the public hearing and was scheduled to complete the Coordinated SEQR Review process. Due to COVID the process has been delayed. No decisions can be made by the ZBA until after the Planning Board, which has declared themselves as Lead Agency has not yet completed the SEQR process. A Planning Board meeting, along with the continuation of a Public Hearing and SEQR process will take place on Monday, June 22, 2020 at 7:00 p.m.. Some items could change concerning the application, depending on the outcome of SEQR.

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Mr. Brabant suggested to the public that any future comments pertaining to this and future applications with a Public Hearing, be sent in writing to the Town Hall via mail or email, in order to allow the Engineers, Boards, Code Enforcement Officer or other involved parties, to review comments and or documentation prior to scheduled meetings.

Steve Sciarratta responded to Bill Groves comments concerning the distance between the current homes and proposed homes on Lincoln Hill Rd. Mr. Sciarratta stated the issue is not the distance between the houses, the issue is the existing houses did not require variances for their driveways, unlike the Jeffery application.

Chairman Vienna stated there is a great deal of information concerning the Jeffery variance applications for the Board to review, and added the Public Hearing will continue to the July meeting.

Stacey Gray moved to continue the Public Hearing for Jeffery variance applications PZ-2019-038, PZ-2019-039, PZ-2019-040 for, Monday, July 20th at 7:00 p.m.. Seconded by Grace Perry. Motion carried.

Grace Perry moved to adjourn, seconded and carried. Meeting adjourned at 7:42 p.m.

Submitted by: Shawn L Cotter L.S. - July 20, 2020

HOPEWELL ZONING BOARD of APPEALS

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Town Hall 585-394-0036 – Fax 585-394-8714 – TDD 1-800-662-1220

Clerk – Shawn L Cotter – 585-394-0036 ext. 8 – (planningzbaclerk@townofhopewell.org)

NOTICE OF PUBLIC HEARINGS

Pursuant to Article III, Section 306 of the Town of Hopewell Zoning Ordinance, a Public Hearing before the Zoning Board of Appeals of the Town of Hopewell will be held on Monday, June 15, 2020 at 7:00 P.M., which will be in accordance with the latest State Governor's Executive Order for conducting public meetings.

Said Hearing will be held in the Town Hall at Hopewell Center, Ontario County, New York.

The Public Hearing is to consider the application of Emily Jeffery, owner of property located at Lincoln Hill Rd, Canandaigua, NY, TM #99.00-1-56.000, in the Town of Hopewell, for the following Variance applications:

Town of Hopewell Zoning Ordinance Appendix §1901 Minimum Lot Area and Setback Table, Section 601

- 1. PZ-2019-038 - Lot # 2 Area Variance for Lot Width - Jefferies Subdivision**
Applicant is proposing a flag lot with a 45' minimum lot width where 150' minimum lot width is required. A variance of 105'
- 2. PZ-2019-039 - Lot # 3 Area Variance for Lot Width - Jefferies Subdivision**
Applicant is proposing a flag lot with a 50.72' minimum lot width where 150' minimum lot width is required. A variance of 99.28'
- 3. PZ-2019-040 - Lot # 4 Area Variance for Lot Width - Jefferies Subdivision**
Applicant is proposing a flag lot with a 30' minimum lot width where 150' minimum lot width is required. A variance of 120'

All persons wishing to appear at such Hearings may do so in person or by attorney or other representative. **JOIN MEETINGS** by clicking the following link: join.me/MRB_LBrabant

To dial in by phone: United States - New York, NY +1.646.307.1990 - Conference ID: 935-915-647 #

Submission of written comments are due by NOON 6/15/2020

via e-mail: scotter@townofhopewell.org OR Town of Hopewell, 2716 County Rd. 47 - Canandaigua - NY 14424 (attention Planning Board/ZBA Clerk)

Shawn L Cotter

L.S. Planning Board/Board of Appeals

June 1, 2020 – Amended 6/9/2020 slc

"This is an Equal Opportunity Program

Discrimination is prohibited by Federal law. Complaints of discrimination may be filed with the Secretary of Agriculture, USDA, Washington, 2025009700."

FOIL - Documents submitted to the Planning Board in connection with any application listed on the agenda will be available to the public at the meeting.

Narina

Schulz <narinaschulz@gmail.com>

Tue, Jun 9, 9:31 AM

Good morning Norm,

Yes, you are correct, I included some content in yesterday's email that was not applicable. I apologize, I tried to pull together testimony to submit for the public hearing between homeschooling and clients for work yesterday. Shawn can share that I sent an edited version of the comments to be submitted for the virtual public hearing just before I read your email this morning. It is copied below. I submitted my comments in italics as they pertain to the specific ZBA variance criteria because I wanted to demonstrate how our concerns relate to the rubric that ZBA members are using to make their decision. It was my understanding that we were "starting from scratch" with the ZBA since too much time has passed since the original ZBA public hearing; hence resubmitting content that was originally submitted years ago.

Narina Schulz

..."From [https://www.dos.ny.gov/lg/publications/Guidelines for Applicants to the Zoning Board of Appeals.pdf](https://www.dos.ny.gov/lg/publications/Guidelines%20for%20Applicants%20to%20the%20Zoning%20Board%20of%20Appeals.pdf)

(Narina Schulz's comments are added in italics)

What must be proven in order to be granted an area variance? If requesting an area variance, that is, permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then State law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State law requires the ZBA to take the following factors into consideration in making its determination:

(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 area variance; *The proposed flag lots are undesirable and not in character with the rest of the neighborhood. All new construction in the Lincoln Hill neighborhood over the last 13 years has met the 150 ft of road frontage criteria.*

The proposed driveway which would cut between the Sciaratta's and Wood's property would cause snow removal issues.

(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; *They could offer a different design but have not. For example a service road - like most other subdivisions in our area have done.*

(3) whether the requested area variance is substantial; *Asking for driveways where there is only 30' or 40' of road frontage where 150' is required is substantial.*

Narina

Schulz <narinaschulz@gmail.com>

Tue, Jun 9, 9:31 AM

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; *Please see attached OCPB remarks as well as Canandaigua Watershed Manager remarks.*

(5) whether an alleged difficulty is self-created. ***The current lot was self created when the Jeffries subdivided it away from the Sciaratta's current house and property and designed the current lot into its current shape.***

Therefore, any hardship they may claim is null and void and all variances must be denied according to New York State law.

They already made profit off their original purchase of the land when they sold the house to the Sciaratta's and can make plenty of profit selling the property as one parcel for construction of one additional house without subdividing it further."

Submitted by Marina Schulz
6/15/2020

. "From [https://www.dos.ny.gov/lq/publications/Guidelines for Applicants to the Zoning Board of Appeals.pdf](https://www.dos.ny.gov/lq/publications/Guidelines%20for%20Applicants%20to%20the%20Zoning%20Board%20of%20Appeals.pdf)

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(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 area variance; *The proposed flag lots are undesirable and not in character with the rest of the neighborhood. All new construction in the Lincoln Hill neighborhood over the last 13 years has met the 150 ft of road frontage criteria.*

a) *The proposed driveway which would cut between the Sciaratta's and Wood's property would cause snow removal issues.*

b) *A driveway that sits 10' away from someone's patio is uncharacteristic of this rural neighborhood.*

c) *Cramming in 3 blind driveways right next to each other with only 30-50' of space on a steep blind hill is a safety hazard. (See attached evidence)*

(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; *They could offer a different design but have not. For example one service road/driveway - like most other subdivisions in our area have done.*

(3) whether the requested area variance is substantial; *Asking to squeeze in 3 driveways where there is only 30', 45' or 50' of road frontage where 150' minimum is required is substantial compared to the neighborhood and the law.*

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; *Please see the submitted OCPB remarks as well as Canandaigua Watershed Manager remarks.*

(5) whether an alleged difficulty is self-created. *The current lot was self-created when the Jeffries subdivided it away from the Sciaratta's current house and property and designed the current lot into its current shape.*

Therefore, any hardship they may claim is null and void and all variances must be denied according to New York State law.

They already made profit off their original purchase of the land when they sold the house to the Sciaratta's and can make plenty of profit selling the property as one parcel for construction of one additional house without subdividing it further.

-See public record on purchase price and sales by Jeffries on this property.

There is no difficulty for the Jeffries that requires a variance. This 10 acre lot is not land locked. There's already a driveway to access it without any variances. The Jeffries are not entitled to a variance. They can sell the land as one parcel for construction of one house without any difficulty. There's no compelling reason for the Town of Hopewell to overturn its own law.

Safety Benefits of Access Spacing

Herbert S. Levinson, Transportation Consultant; and Jerry S. Gluck, Urbitran Associates, Inc.

Abstract

The spacing of driveways and streets is an important element in roadway planning, design, and operation. Access points are the main source of accidents and congestion. Their location and spacing affects the safety and functional integrity of streets and highways. Too many closely-spaced street and driveway intersections increase accident potential and delays, while too few inhibit access and over-concentrate traffic.

More than 40 years of research has indicated that accident rates increase with the number of intersecting roadways or driveways per mile. As early as 1953, research results showed that accident rates generally increased with both the frequency of access and the average daily traffic; however, the greatest increases resulted from increasing the number of access points per mile. More recent studies in Oregon, Florida, Colorado, and elsewhere found similar relationships.

The consistent pattern of the research results from the above and numerous other studies is clear; the greater the frequency of driveways and streets, the greater the rate of traffic accidents. Increasing the spacing and providing a greater separation of conflict points reduce the number and variety of events to which drivers must respond. This translates into fewer accidents, travel time savings, and preservation of capacity.

The spacing of driveways and streets is an important element in the planning, design, and operation of roadways. Access points are the main source of accidents and congestion. Their location and spacing directly affect the safety and functional integrity of streets and highways. Too many closely-spaced street and driveway intersections, for example, increase accident potential and delays and preclude effective traffic signal coordination. Too few inhibit access and over-concentrate traffic.

This paper describes the results of many research studies that identified the safety benefits of access spacing. These findings provide a basis for establishing sound access spacing practices.

Overview of Research

More than 40 years of research has documented the basic relationships between access and safety. Roadways with full control of access consistently have lower accident rates than other roadways. Accident rates generally increase with greater frequencies of intersections and driveways. Interstate highways with complete control of access consistently experience less than half of the accident rate of other roadways. Arterial roadways with many driveways may have double or triple the accident rates of roadways with wide spacings between access points.

- An early (1953) study by Staffeld on rural two-lane highways in Minnesota found that accident rates generally increased with both the frequency of access and the average daily traffic¹. Roadways with more than 20 access points per mile had more than double the rates of roadways with less than 4 access points per mile.
- Schoppert (1957) found that the number of access points along rural two-lane highways is a reasonably good predictor of the number of potential accidents within an ADT group².

Hopewell ZBA Notes for June 15, 2020 – Tim Vaughan, 3464 LHR

Regarding: Jeffery Subdivision on Lincoln Hill Rd

This subdivision is identical to the one proposed in 2016, with a few additional details added, such as rain gardens. The three variances requested were wrong then and they are wrong now.

The history of this development matters and it is important to go back to the Planning Board meeting minutes of July 18, 2016. Jim Carello made a motion to recommend the Zoning Board of Appeals NOT approve the variances as requested.

The Planning Board voted unanimously YES to that motion:

A YES vote was a recommendation to NOT approve the variances as requested.

After the fact, the town's attorney decided that this vote was null and void. However, Acting Supreme Court Justice Fredrick Reed determined this was the vote that counted; and this decision was further upheld by the New York Supreme Court Appellate Division, Fourth Judicial Department as the vote that counted. Ultimately, this erroneously influenced the ZBA's decision to approve all three variances.

Essentially, nothing has changed in the plans of this subdivision. These three variance requests are substantial and do not meet the character of the neighborhood of Lincoln Hill Road. Sure, the proposed lots are over 2.5 acres each, but the addition of three flag lots is out of character. Lot size is not the only characteristic that matters, nor the most important, if it was, we wouldn't be here. Planning boards and zoning boards must weigh the balance of all characteristics of the neighborhood.

There are currently 19 lots on Lincoln Hill Road, with only one flag lot at 3517, a transaction that took place in 1983, well before the Town of Hopewell adopted the current Zoning Ordinance requiring

150 feet of road frontage, which by its very existence, deliberately restricts and discourages flag lots.

The proposal to add three flag lots, shared driveways and other features related to the proposed subdivision plans will have direct and adverse consequences on the character of the neighborhood, environment and neighborhood safety.

The Jeffery lot, as is, does not require any variance for a single dwelling. As we see it, two lots would be acceptable. And four lots is overkill.

No matter how you look at it, jamming a driveway down the 30' strip of land between the Sciarratta's at 3477 and the Wood's at 3495, and placing a dwelling behind the Sciarratta's is completely out of character for this neighborhood and should not be allowed.

This is a self-induced problem, as no relief is required for the property to be in conformance with the Town of Hopewell's Zoning Ordinance for a single dwelling.

It has been said this subdivision was "Grandfathered" in 2007. In reality, if it was, we all would not be here.

Residents rely on Town and County Planning and Zoning Boards to maintain community standards, both for property owners and the surrounding community. We live on Lincoln Hill Road; Emily Jeffery does not.

Approval of these three variances are not minor. Each of these three variance requests are quite significant. If approved, you might as well throw away the town's zoning code because it will mean nothing.

I thank the Board for their time and listening to our concerns.