

DRAFT

ZONING BOARD OF APPEALS MEETING

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MARCH 25, 2021

A Zoning Board of Appeals Meeting took place on Thursday, March 25, 2021 at 7:00 P.M. at Village Hall, 9 Fairlawn Drive, Washingtonville, New York.

PRESENT:

Chairperson Maureen DeVinko, Zoning Board of Appeals members Denni Lozza, Jim Kiernan, Steven Presser, Merald Drayton.

ALSO PRESENT:

Zoning Attorney Elizabeth Cassidy, Building Inspector & Code Enforcer John Terry.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Chairperson Maureen DeVinko led the Pledge of Allegiance to the Flag.

DISCUSSION – 1 NICOLL STREET – TWO (2) FAMILY DWELLING:

Chairperson Maureen DeVinko indicated discussion regarding the applicant from number 1 Nicoll Street is tabled until next month.

Attorney Elizabeth Cassidy added in review of the file it appears that the General Municipal Law 239 Referral is not completed because it is within 500 feet of Route 94. Zoning Board is obligated to refer this issue to the Orange County Department of Planning. Ms. Cassidy contacted the Applicant's Attorney and notified him of this matter. No vote will be taken tonight. Once we receive the 239 back from Orange County or in the alternative 30 days has elapsed, we can take action on that particular application.

DISCUSSION – 32 EAST MAIN STREET – ORANGE COUNTY BAGEL:

Ryan Fellenzer from Fellenzer Engineering and who is representing Orange County Bagel at 32 West Main Street in the Village stated the Applicant was previously in front of the Zoning Board in January and they were referred to the Z.B.A. from the initial Planning Board Visit. The Board approved those variances. On February 8, we received an updated survey for our site and when we compared the updated survey with what we had proposed for an approval, we noticed that a couple of the dimensions that received approval were different but they were very minor in terms of how they changed. We wanted to present this to the Board and review what the changes were and get the Board's opinion on the reapproval of those variances.

Mr. Fellenzer explained there were eight (8) variances previously presented and only four (4) of them are affected. The four (4) variances that were passed, the lot area decreased, we previously had shown 32,534 square feet and now it is 26,777 square feet. Lot width decreased, the lot would decrease from 184.7 feet and we are now showing 167.8 feet. Proposed minimum front yard setback, increased from 20 feet to 22 feet. The proposed minimum both side yards decreased. We are originally 70.5 feet; we are now 66.2 feet. There is one (1) additional variance that due to the proposed lot coverage on the Zoning Table, I believe is 25 maximum with the slightly decreased lot size, we are now up 27% so that is an additional area that we will be requesting due to the change in the lot area.

DISCUSSION – 32 EAST MAIN STREET – ORANGE COUNTY BAGEL (CONTINUED):

Zoning Attorney Elizabeth Cassidy stated this matter is presently before the Washingtonville Planning Board. The Planning Board has circulated a "Notice of Intent" to declare lead agency. In that Notice, they declared their intent to perform a coordinated review for our purposes. What that means is that in order to take action we must await the Planning Board's Action either through the adoption of a negative declaration, finding that there's no adverse environmental impact, or if they called positive declaration where there is an adverse impact at the finding statement at the end of the process. In addition, because of the site's location, it does need to be referred to Orange County which can be done simultaneously with the Planning Board's review as part of General Municipal Law 232-39. I have had several discussions with Stephanie Tunic, Washingtonville's Planning Board Attorney, and at this point the Planning Board is looking for essentially a poll of the Board to see if the requested increase variances would be acceptable to the Board.

Steven Presser indicated he was under the impression this applicant was going back to the Planning Board.

OPEN PUBLIC HEARING – 32 WEST MAIN STREET – ORANGE COUNTY BAGEL:

Chairperson Maureen Devinko indicated the Public Hearing will be reopened for audience questions.

Walter Thomas, co-owner of the property, indicated taking into consideration some of these changes, the actual lot footprint itself has not changed dramatically, and when you change that number of 33,000 and change dropping it down to the 26 it sounds like a 5,000 square feet decrease in this lot which sounds drastic but it was actually a number that was on the initial tax map that was calculated from just taking an improper calculation of a lot size thinking it was a perfect square. The lot size itself has not changed dramatically.

Susan Walski questioned regarding the reduced side yards, what is this going to do with parking and will the facility have the required number of parking spots per zoning?

Chairperson DeVinko commented there was a clerical error. They do have the capacity of spots that is needed for that size building. It is a Public Lot. There are six (6) spots.

Merald Drayton entered the meeting through Zoom at 7:16 P.M.

Dawn Gallagher questioned what is the public parking across the street used for?

Corrinne Courtney from "Nailed It Hardware" mentioned with regard to parking the lot does remain empty every day. The Farmer's Market has been relocated to L. Vernon Allen Park.

Attorney Cassidy stated the Board analyzed the following: Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variances. The answer to this is no. The proposed variances will permit the construction of a business center with three (3) businesses located therein. The purpose of the neighborhood business district is to promote the creation of business which allows foot traffic to exist. This location will provide same.

**OPEN PUBLIC HEARING – 32 WEST MAIN STREET – ORANGE COUNTY BAGEL
(CONTINUED):**

Ms. Cassidy added the neighborhood consists of the utility company, other businesses, a school district and municipal parking lot. The proposed project fits in exactly with the type of buildings and uses in this area. Additionally, the building as it currently exists would need to be remodeled or demolished as a result of a fire. The building presents limited uses for which a future owner would use it as such, and the new construction provides the best alternative.

Ms. Cassidy indicated whether the benefits sought by the applicant can be achieved in some method other than in area variance. The answer to this is yes and no. The applicant stated that he could remodel the building, invest several hundred thousand dollars for the limited use as a Bed and Breakfast, because of its layout it presents limited options for future uses. The Board determined that he could not accomplish his goal of having a business center development with the property in its current condition due to the rising cost of construction, and is necessary to have a certain amount of units to make a project profitable. The neighborhood business district wants business center development but it only permits it on lots almost two acres in size. There are no properties in the zone that would satisfy this requirement.

Ms. Cassidy added the applicant's proposal to create a business center could not happen anywhere else in the zone. Whether the area variance is substantial, the Board finds this answer to be yes based on the requested size dimension but not as it relates to the property location and proposed project. The variances request reductions from eighty thousand square feet to 32544 which is substantial, and the other area variance says request lot width to be reduced from 250 feet to 184.7 feet front yard from 60 to 20 and one side yard to be 6.5 instead of 40. All of these reductions are substantial however based on the project location they are not. The adjoining properties do not have individuals that reside. They are business school district and utility company. Therefore, the substantial nature of the reductions are minimized by the project location. If this property was located within a residential neighborhood then the people living next door may have possible daily effects on everyday life. The outcome would be much different, however, the location in the commercial zone with no neighbors except those of a corporate nature make the proposed variances much less substantial whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board finds this answer to be no, as stated above the adjoining property of a business, a school district or a municipal parking lot, the project fits the character of this location and will not have any adverse changes in the neighborhood. Whether the alleged difficulty is self-created, the board finds this to be yes, there can be no dispute that the applicant self-created the request to construct the proposed building however, the board determines that the current code in essence makes construction of a business center possible under the current zoning.

Attorney Cassidy indicated the Zoning requires almost two (2) acres to create such center and there are no lots of that size left in the neighborhood district to accomplish same as such even though it is self-created by the applicant's proposal, this factor when viewed against the current zoning code does not adversely affect the impact.

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**OPEN PUBLIC HEARING – 32 WEST MAIN STREET – ORANGE COUNTY BAGEL
(CONTINUED):**

Attorney Elizabeth Cassidy stated there will be no formal action taken tonight regarding this matter.

ADJOURNMENT:

Chairperson Maureen DeVinko made a motion, seconded by Zoning Board of Appeals member James Kiernan and adopted to adjourn the March 25, 2022 Zoning Board of Appeals Meeting; said Resolution passed by a unanimous vote of the Zoning Board of Appeals. 5 Ayes, 0 Nays, 0 Abstentions.

RESPECTFULLY SUBMITTED,

SOPHIA FOLEY

CLERICAL ASSISTANT