Unapproved minutes filed with
Town Clerk 7/19/17
Minutes Approved 8/9/17
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July 12, 2017

TOWN OF EVANS

REGULAR MEETING OF THE ZONING BOARD OF APPEALS

Members Present: A. Yusick, D. Maglich, T. Spada
N. Manges, V. Gugliuzza

Members Absent:

Also Present: P. Ryerse, Building Inspector

Mr. Yusick opened the meeting with a quorum at 6:30pm. The meeting was held in the Municipal Building Court room, 8787 Erie Road, Angola, New York 14006.

Mr. Yusick explained the procedure in which the meeting will be conducted. The procedures are that old business matters are heard first and then appeals are heard according to the order of publication in The Dunkirk Observer. The staff report prepared by the building inspector is read. The board has had your file for a week. We have had an opportunity to review your appeal. The appellant is then given the opportunity to speak, and then those in favor or in opposition are allowed to speak. After hearing the respective matters, the Board will either vote or reserve the right pursuant to our local statue to adjourn to executive session to deliberate. Motions granting and rejecting appeals are voted upon in the public portion of the meeting.

Mr. Yusick asked for a motion to approve the minutes from June 14, 2017.

Mr. Maglich made a motion to approve the June 14, 2017 minutes, Ms. Manges seconded. All in favor, motion carried.

RECEIVED
AUG 10 2017
TOWN CLERK
TOWN OF EVANS

OLD BUSINESS:

Pioneer Camp and Retreat Center 9324 Lake Shore Rd, Angola, New York 14006, to demolish and erect new cabins at the above SBL # 250.07-1-2.1 and in violation of the Town of Evans Zoning Law section 200-19 C (2) front yard setback and section 200-19 C (7) (b) distance to residential property line.

Mr. Yusick stated that this matter was heard before and after hearings took place over a number of dates the board voted on it and granted three variances, two for front yards and one for a distance to residential property lines. The matter was appealed before Supreme Court and there was an order that returned it/remitted it to the board and at the last meeting, the discussions was concerning the meaning of the order and at that time it was Mr. Yusick's understanding that the attorneys were going to try to resolve the matter as to what the meaning of the order was and Mr. Yusick's reading of it was that it was being remitted to the board on one issue and that issue was 239M of the county law which requires the board to notify the County of Erie and give them sufficient time to review the matter and respond. Mr. Yusick's asked the audience what the status is.

Mr. Jay Pohlman who represents Camp Pioneer spoke and stated that they have different readings as to the decision and order and it is his opinion consisted with the chairperson that it was remanded to the zoning board for one purpose, to ensure the board comply with the law and have the county review on the zoning board level. It had only been obtained by the Town of Evans on the planning board level. The petitioners went through two phases of review, first the planning board and second the zoning board for the variances. Nothing has changed on the proposals. The petitioners are willing to follow the original conditions put in place.

Alex Knowles, Executive Director of Camp Pioneer, approached the board. Mr. Yusick asked if he was an attorney. Mr. Knowles stated no. Mr. Yusick asked if he could have a seat.

Jennifer Farrell, attorney for the Town of Evans, approached the board. She stated that the matter was remitted for a 239M referral to the county planning. Mr. Yusick asked Mr. Ryerse if we had the 239M and he requested it be marked into evidence. Ms. Farrell stated that the requirement has been satisfied. Mr. Yusick asked Ms. Farrell if there was no agreement as to the meaning of the order and his reading of the order was that it was being remitted to the board on just that issue. That there were various matters that the objective's rights were reserved which would be compatible for that reading. Otherwise, if it's a trial de novo or hearing de novo there's no need for that in Mr. Yusick's estimation because everything would be back on the table after the matter was heard if it had the same result. Mr. Yusick asked Ms. Farrell that since she represents the board what her position was regarding the order. Ms. Farrell stated that her position was that the remittal requirements which was the referral to the county for the 239M has been satisfied.

Mr. Yusick read from the 239M form and stated that the form was referred to the town planning and on 6/15/17 they returned it to the board with number four marked on the form which said that they had no recommendation that the proposed action has been reviewed and has been determined to be of local concern. Someone in the audience asked Mr. Yusick if it was the town or the county and Mr. Yusick stated that it was the county and apologized if he said the town in error. Mr. Yusick stated that he was reopening the prior proceeding for that purpose only and that is to have this 239M Form which is marked as "Exhibit A" be part of the record. Mr. Yusick asked if the board had any questions. Mr. Yusick stated that based on the recommendation of the board's attorney and town attorney, Jennifer Farrell, regarding the meaning and the reading of the order he will make a motion to grant the variances which were granted in the proceeding which are section 200-19 C (2) front yard setback from 50 feet to 25 feet 9 inches, 200-19 C (2) from 50 feet to 40 feet on Berrywood Dr and 200-19 C (7) (b) distance to residential property line from 300 feet to 60 feet.

Mr. Yusick asked if counsel was there for the objectants.

Dennis Fisher approached and stated that counsel was not here presently but he would like to speak on the issue. He sent correspondence to the board earlier to Ms. Renaldo. The reason he is here was to express their concern with respect to the town's position relative to going forward with this simply as a matter that was remanded back to the board with compliance to 239M. The part that's missing here, the part that's not mentioned is that the decision was annulled. It was declared a nullity as if it did not happen and anything short of that de nova review in our opinion is inappropriate and probably indefensible for this board. Mr. Yusick stated that his position is that if the order said that the proceeding was annulled that is different then the board's decision being annulled. If the decision continues then there is no reason that the board is here, it's being remitted. (Gentleman did not state his name.)

Mr. Pohlman read from the court's decision. He stated that General Municipal Law 239M requires the proposed town planning and zoning actions be referred to the county planning agency. "Here the respondent offered proof that the planning board referred the proposed site plan to the Erie County Division of Planning and the Town of Evans and the Zoning Board were the respondents. However, no such proof was proffered on behalf of the Zoning Board of Appeals for the requested variances. The "failure to comply with the referral provisions of General Municipal Law section 239M is not a mere procedural irregularity but rather a jurisdictional defect involving the validity of the legislative act". Zellnick vs. Small 268 the appellate division section 527 529. Accordingly, the matter is remitted to the Zoning Board of Appeals for compliance with the referral provisions of General Municipal Law section 239M". He stated that it was one paragraph only taken out of the decision from Judge Deborah Chimes that was issued on the Article 78 proceeding and at the time that was a hearing and the decision was filed in Erie County Clerk's office on December 21, 2016. The order then entered had the word annulled in it but in fact the order was supposed to just contain the judge's decision

and have it attached. The underline determination of the court was remit for purposes of complying with the section 239.
Dennis Fisher spoke to the board. He read form the order that was filed on January 30, 2017 and signed by Honorable Deborah A. Chimes of the Supreme Court. "It is further ordered, that the May 19, 2016 decision of the Zoning Board of Appeals granting variances to Pioneer Camp and Retreat Center is annulled and the matter remitted to the Zoning Board of Appeals for compliance with the referral provisions of General Municipal Law 239M". He stated that his opinion is that it wasn't the court's position that it be annulled, remitted back to here for compliance to 239M and the Zoning Board would advertise for a hearing which stated that all parties would be heard pro or con for the granting of these variances and we have many residents here that were expected to speak and were being told that you are not hearing testimony.

Mr. Yusick stated that the board is not going to hear any testimony. He stated that he has been in a lot of courtrooms where proceeding have been scheduled for trial and the trials never took place. After reviewing the matter, he is going back to his motion.

Mr. Maglich seconded the motion with the provision that the accommodations that were discussed in the earlier proceeding are abided by.

Mr. Yusick added to his motion that the decision regarding variances remain in effect for the term of the construction because of the delays in the proceeding.

Ms. Spada recused herself which she did in the prior proceeding.

Mr. Gugliuzza recused himself because he knows Mr. Fisher and Mr. Csati.

Mr. Yusick stated that the variances that were previously granted are reinstated and they have 30 days to appeal.

All in favor:
Vote: Mr. Yusick, aye
Ms. Spada, recused
Ms. Manges, aye
Mr. Maglich, aye
Mr. Gugliuzza, recused

NEW BUSINESS:

Robert English 638 Albeeville Rd, Angola, NY 14006, to reduce the side yard setback and eve projection into a required side yard, at the above SBL # 234.12-2-22 for a covered porch structure. In violation of the Town of Evans Zoning Laws, 200-12 C (f) [3], and 200-36 C.

Present for the appeal was Robert English, III.

Mr. Yusick asked Mr. English if he was here a year ago. Mr. English stated yes. Mr. Yusick asked if it was for the same variances. Mr. English stated yes and Mr. Ryerse noticed that he had a fence that was not on his property so that has been moved. Mr. Yusick asked if it's the same construction. Mr. English stated yes.

Mr. Yusick asked if the board has any questions and no one in the audience was there for or against this appeal.

Mr. Maglich made a motion to approve, seconded by Ms. Spada.

All in favor:
Vote: Mr. Yusick, aye
Ms. Spada, aye
Ms. Manges, aye
Mr. Maglich, aye
Mr. Gugliuzza, aye

Karen Kondrick 156 Reeves Rd, Angola, NY 14006, to reduce the front yard setback for an open porch/deck at the above SBL # 250.17-8-47. In violation of the Town of Evans Zoning Laws, 200-12 C (1) (f) [1].

Applicant is requesting to reduce the front yard setback from 25 feet to 9.97 feet on Virginia St.

Present for the appeal was Karen Kondrick.

Mr. Yusick asked if Virginia St is a paper street. Mrs. Kondrick stated yes.

Mr. Yusick asked if the board has any questions and no one in the audience was there for or against this appeal.

Mr. Yusick made a motion to approve, seconded by Ms. Spada.

All in favor:
Vote: Mr. Yusick, aye
Ms. Spada, aye
Ms. Manges, aye
Mr. Maglich, aye
Mr. Gugliuzza, aye

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, N.Y. AND REPLY TO MUNICIPALITY

Note: Please complete in triplicate. Send original and one copy (with attachments) to Erie County Division of Planning, Room 1053, 95 Franklin Street, Buffalo, N.Y. 14202
Retain last copy for your files.

DO NOT WRITE IN THIS SPACE

Case No.: ZR-17-284

Received: 5/15/17

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municpal action, such reply must be considered.

Description of Proposed Action

1. Name of Municipality: TOWN OF EVANS

2. Hearing Schedule: Date JULY 12, 2017 Time 6:30 Location 8787 ERIE RD. ANGOLA

3. Action is before: ☐ Legislative Body ☒ Board of Appeals ☐ Planning Board

4. Action consists of: ☐ New Ordinance ☐ Rezone/Map Change ☐ Ordinance Amendment
☐ Site Plan ☒ Variance ☐ Special Use Permit ☐ Other

5. Location of Property: ☐ Entire Municipality ☒ Specific as follows (Location Sketch Map Required) NORTH EAST CORNER. ADJACENT TO BERRYWOOD Rd. & LAKESHORE

6. Referral required as site is within 500' of: ☐ State or County Property/Institution ☐ Municipal boundary ☐ Farm Operation located in an Agricultural District
☐ Expressway ☒ County Road ☐ State Highway ☐ Proposed State or County Road, Property, Building/ Institution, or Drainageway

7. Proposed change or use (be specific): DEMOLISH 8 EXISTING CABINS AND REBUILD 8 NEW CABINS

8. Other remarks: (ID#, SBL#, etc.) SBL # 250.07-1-2.1

9. Submitted by: PAUL RYERSE SUPERVISING CODE ENFORCEMENT OFFICER 5/11/2017
(Name & Title) (Date)

8787 ERIE Rd. ANGOLA NY 14006
(Mailing Address-Please include zip code)

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 5/15/17. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ The proposed action is not subject to review under the law.
2. ☐ Form ZR-3, **Comment on Proposed Action**, is attached hereto.
3. ☐ The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, **Recommendation on Proposed Action**, which is attached hereto.
4. ☑ No recommendation; proposed action has been reviewed and determined to be of local concern.

By the Division of Planning: _____ Date: 5/15/17

ZR-1, ECDEP (Rev. 12/95)

Exhibit A

Benjamin Noel 641 Hickory Rd, Angola, NY 14006, to reduce the side yard setback at the above SBL # 234.12-3-17, to demolish an existing detached garage and erect a new one in the same location. In violation of the Town of Evans Zoning Laws, 200-12 C 2.

Applicant is requesting to reduce the side yard setback from 5 feet to 1.5 feet. There is an existing 18' x 30' garage and the new one will be 18' x 20'.

Present for the appeal was Benjamin Noel.

Mr. Yusick asked Mr. Noel if the reason he needed to be close to the property line because putting it 5 feet from the line would put the garage behind the house and make entry by a vehicle difficult. Mr. Noel stated yes.

Mr. Yusick asked if the board has any questions and no one in the audience was there for or against this appeal.

Ms. Spada made a motion to approve, seconded by Mr. Maglich.

All in favor:
Vote: Mr. Yusick, aye
Ms. Spada, aye
Ms. Manges, aye
Mr. Maglich, aye
Mr. Gugliuzza, aye

Mr. Yusick discussed another matter with the board that was heard at the last meeting which was a garage, Liberatore was the matter. It was heard and Mr. Gugliuzza recused himself because of his friendship with one of the parties. Ms. Spada was not present because at the last minute she was tied up with a client. It was voted on and the matter was two in favor and one opposed. The attorney for the applicant has filed an Article 78 proceeding but also spoke to both Mr.Yusick and Town Attorney Jennifer Farrell and requested that we present to the board a rehearing of the matter with a full board less Mr. Gugliuzza who will continue to have a conflict. Mr. Yusick made a motion to present it at the next meeting and the vote needs to be unanimous.

All in favor:
Vote: Mr. Yusick, aye
Ms. Spada, aye
Ms. Manges, aye
Mr. Maglich, aye
Mr. Gugliuzza, aye

The matter will be on the next board meeting and it will be advertised.

Mr. Yusick made a motion to adjourn to the next scheduled meeting.

All in favor:
Vote: Mr. Yusick, aye
Ms. Spada, aye
Ms. Manges, aye
Mr. Maglich, aye
Mr. Gugliuzza, aye

Respectfully Submitted,

Jennifer Renaldo
Secretary

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