ZONING BOARD OF APPEALS DECISION ON AREA VARIANCE
re 1175 Backus Road, Derby, New York

PRESENT: H. Martin (Chair), C. LaRusso, J. Kennedy, D. Maglich, T. Spada,

ABSENT:

At a regular meeting of the Town of Evans Zoning Board of Appeals, held at 8787 Erie Road, Angola, New York 14006, on the 8th day of June, 2022, at 6:00 P.M, the above-captioned matter was determined. Applicant Cathleen Evan of 1175 Backus Road, Derby, New York requested to construct a single family dwelling on SBL#221.00-5-6.3 and split a portion from SBL#221.00-5-10.2, in violation of the following Town of Evans Zoning Laws:

Section 200.8.2(C)(1)(a), minimum lot area re SBL#221.00-5-6.3
Section 200.8.2(C)(1)(b), minimum lot width re SBL#221.00-5-6.3
Section 200.8.2(C)(1)(d), minimum side yard setback re SBL#221.00-5-6.3
Section 200.8.2(C)(1)(b), minimum lot width re SBL#221.00-5-10.2

The subject application for area variances originally came before the Town of Evans Zoning Board of Appeals at the May 11, 2022 meeting and thereafter adjourned for decision, which was had at the June 8, 2022 meeting, at which time the matter was DENIED. Importantly, a similar request by the applicant for the subject parcels, and the desired intent to develop a house on SBL#221.00-5-6.3, was tabled previously at the April 13, 2022 meeting, then amended by the applicant and resubmitted as the subject application.

At all meetings herein, discussion was had relative to benefits achieved in granting the subject variances (i.e. construction of a new house accommodated the needs of an injured/disabled person near family) with any proposed detriment to the neighborhood or community's health, safety and general welfare if the variances are granted. At each public meeting relative to the parcels in question, opposition was raised relative to the application and the uniqueness the suggested parcels would have in the respective community, zoned Rural Agricultural District (R-A).

Pursuant to Town Law §267-b (3)(b), in so deliberating, the Board considered the following concerns:

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;
2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. whether the requested area variance is substantial;
4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Specific discussion was had between the Applicant and the Board, and within the Board itself, on the significant difference the proposed new parcels would have in comparison to the neighborhood of larger lot sizes and setbacks, and the intent of established neighbors in maintaining those set standards.

The concerns of the opposing neighbors were deliberated upon, including any adverse effects on the neighborhood. Importantly, SBL#221.00-5-6.3 was originally purchased by the Applicant with the full understanding of the limitations of subject parcel. As discussed, there are additional options the Applicant could consider in an effort to achieve their objective (i.e. construction of a new house accommodated the needs of an injured/disabled person near family) without having to incur as many area variances.

The following determination was offered by Board Member Howard Martin, who moved for denial, and seconded by Board Member John Kennedy, with unanimous agreement of the Board present, to wit:

WHEREAS, the Town of Evans Zoning Board of Appeals has received an application from Cathleen Evan for variances of Section 200.8.2(C)(1)(a), minimum lot area re SBL#221.00-5-6.3, Section 200.8.2(C)(1)(b), minimum lot width re SBL#221.00-5-6.3, Section 200.8.2(C)(1)(d), minimum side yard setback re SBL#221.00-5-6.3, and Section 200.8.2(C)(1)(b), minimum lot width re SBL#221.00-5-10.2, of the Zoning Law of the Town of Evans; and

WHEREAS, in connection with such application, the Zoning Board has received and reviewed the application, held a public hearing and received comments thereat, and deliberated thereon; and

WHEREAS, after review, the Zoning Board has weighed the effects of the requested use variances of both parcels, SBL#221.00-5-6.3 and SBL#221.00-5-10.2, on the health, safety, and welfare of the neighborhood and community, and DENIED the subject application.

So Submitted.

Howard Martin, Chair
Town of Evans Zoning Board of Appeals