

## Joint Town/Village of Lima Zoning Board of Appeals Meeting

August 29th, 2016

### MEMBERS PRESENT:

John Bailey; Chairman, Jim Van Dick; Vice Chairman, Dennis Neenan, Duane Thompson, Steve Werner, Andy Matthews.

### MEMBERS EXCUSED:

Duane Fuller.

### ATTENDEES:

Charlie Johnson; Code Enforcement Officer, John Correll; Village Board Liaison.

### GUESTS:

Ed Salerno Sr., Ed Salerno Jr., Dan O'Dea and Marcia Dinehart, Theresa Chiarilli, Richard Leasure.

The meeting of the Joint Town/Village of Lima Zoning Board (The Board) was called to order 7:00 P.m. on Monday, August 29th, 2016 and opened with the Pledge of Allegiance.

## OLD BUSINESS

### Minutes

Duane Thompson made a motion to accept the minutes as submitted for the June meeting. Steve seconded and all were in favor.

## NEW BUSINESS

### 1856 Dalton Rd. – Salerno

Rick Leasure, realtor, presented a request for a variance on behalf of Ed Salerno Sr., the owner. Mr. Leasure stated the owner desires to sell a 20-acre lot off the existing 23-acre parcel. Where a total of 300' of road frontage is required for two houses; they only have 60' contiguous. Another section of road frontage 30' wide exists between two other houses. They propose selling that section to one of the adjoining neighbors. There was some discussion of a partially shared driveway. The Chairman stated that a shared driveway was not the issue of concern.

Ed has a legal letter (included in the application) that he claims states that he has the right to create this second flag lot. Mr. Leasure also stated that he disagrees with the law prohibiting flag lots and he said he has sold a lot of them.

The Chairman pointed out the variance proposes creating a *second* flag lot with the already non-conforming parcel. Town Code 250-79-A-c specifically states that flag lots will not be permitted in new proposed subdivisions. A drawing of one possible house location directly behind Mr. Salerno's house was circulated. Mr. Leasure stated that this location could hurt Mr. Salerno's resale value but that it would not affect the other adjoining properties.

Dennis was asked to explain the reason that flag lots were deemed undesirable. He said that his understanding was that it was due to poor access for emergency vehicles, loss of potential farmland, and infringement on adjoining properties. Two neighbors were in the audience and were asked for their input. Dan O'Dea spoke against the granting of this variance and Theresa Chiarilli was in favor of it.

Ed charged the Board and the Town Government in general with severe prejudice against him based on class. He made a request to have noted in these minutes that he wanted a copy of the minutes of the meetings when variances were granted on: Plank Rd, Ideson Rd-1997, and the Lighthouse subdivision across from Dollar General. Andy then responded that no class prejudice was involved and that he was being heard fairly by this board.

The 5 balancing questions used in the variance process (and contained in the application) were discussed at great length and input was specifically solicited from the applicant and his agent and the audience in general. As the Board continued discussion of these questions they found problems in three cases.

Question #2 asks if the desired affect (sale of the land) could be achieved by any other means. The board found that subdivision was still a viable option. The owner has previously subdivided the property and then reincorporated the parcels. He does not like the cost of the development, which the board legally may not consider as a factor in the variance. It was also stated that he could sell the parcel to a developer who could put in the required road for a development. The issue of farming the land was raised and Mr. Salerno said there were some trees on the lot so he didn't think it could be used for farming.

Question #3 asks if the amount of the variance is substantial. Making a second non-conforming parcel and the reduction of the road frontage from 300' (for two lots) to the 60' that this parcel contains were found to be excessive. And Question #5 asks if the problem was self-created. In the application the owner had stated that it was.

John Correll brought up the fact that the letter, dated July 14<sup>th</sup> 1998, (which was submitted with the application) does not guarantee anything specific. It states that "...a variance application requesting two residences would be favorably entertained assuming all other zoning requirements have been met."

At 8:05 the Chairman closed the Public Hearing. The audience remained to witness the discussion and the vote.

Steve stated he would like to see a plan including the location of the proposed house. Jim stated that it looked like the criteria have not been met for a variance based on the answers to the 5 balancing questions. John sympathized about the large size of the lot, but reiterated: that new flag lots are prohibited, 300' of frontage down to 60' is an excessive variance, that relief was granted initially to allow the 1<sup>st</sup> house, and the property was previously subdivided as is allowed.

Andy made a motion to deny the variance based on the fact that the criteria have not been met. Jim seconded the motion. The vote was all in favor. The motion to deny the variance passed.

The applicant then became irate and rude. He promised to work to have the case overturned. He left the room and then his son directed a threat toward the room in general.

## **OTHER BUSINESS**

The Chairman brought up an upcoming training workshop on the SEQR process. It will be Sept 27<sup>th</sup> at 4:00 at MCC and includes dinner. There was more discussion of other training options such as attending Livingston County Planning Board meetings, or other local meetings, and the process for verifying attendance.

At 8:56 Steve made a motion to adjourn. Duane Thompson seconded and all were in favor.

Cindy DePuy; Secretary.

