



Town of Hebron

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Hebron Zoning Board of Adjustment

Minutes of Meeting 6/14/06

Members Present: Pete Carey (chairman), Ed Gempka, Roger LaFontaine, Tom Gump (alternate), and Sheila Oranch (secretary)

Others Present: Thomas Molloy, William Kenny, Bruce Barnard, Karl Braconier, Kellie Braconier and Dan Merritt

Time Convened: 7:19 PM

Time Adjourned: 9:42 PM

Next Meeting: TBA

Agenda Items:

1. To hear an appeal submitted by Karl Braconier for a setback waiver concerning Article IV, Section H of the Zoning Ordinance. Applicant proposes to build a 40 foot by 40 foot barn to replace an existing barn on property located at 295 North Mayhew Turnpike/Route 3A, Tax Map 1-BP-5, in the Rural Zone Case # 212
2. To hear an appeal submitted by William A. Kenny for a setback waiver concerning Article IV, Section H of the Zoning Ordinance. Applicant proposes to replace an existing cottage with a new two and one-half story, two-bedroom cottage on property located at Onaway Point Road, Tax Map 6.016, in the Lake Zone. Case # 213
3. Approval of minutes and other administrative business.

The hearing was convened by Pete Carey, who introduced the Board members to the public, appointed Tom Gump to full voting member status for purposes of this hearing, and reviewed the hearing process. He requested and received Board consensus to postpone approval of the prior meeting minutes and administrative matters to the end of the agenda. He stated that packages had been prepared for all the Board members for both cases, but not everyone had gotten a complete package for the Braconier application. The secretary made copies of the additional pages. All members of the Board stated that they had seen the Braconier property, but Ed Gempka and Tom Gump had not visited the Kenny property. As photographs and maps were being presented, they both said they felt a site walk was not necessary.

Case # 212, Braconier appeal, 295 North Mayhew Turnpike/Route 3A, Tax Map 1-BP-5:

Pete Carey noted for the record that public and abutters' notices were accomplished in accordance with regulations and law.

Karl Braconier presented his case, showing and explaining his map and plan and explaining the alternatives he had considered and ruled out for various reasons. Limiting factors include a spring and drainage ditch, the septic leach field, and a four-foot culvert under Route 3A that has been known to block up and flood the area (even washing out part of the highway at times). Other considerations include allowing adequate turn radius for vehicles and visibility of the barn from the house. No matter where a 40-foot by 40-foot barn is placed on the buildable portions of the lot, it would still need a variance. Roger LaFontaine asked about the age of the present barn; Karl replied it was built in about 1990. Pete Carey asked Karl to walk the Board through the elevation; and he did. Roger asked about trees near the proposed barn, and Karl replied that there are some dead trees that need to be removed in addition to a large oak that will probably have to come out. He will keep as many trees as possible. Pete asked about construction. Karl showed ideal Plan A which would include a gambrel style roof. If the builders hit ledge and cannot go down far enough, they will switch to Plan B, which would have a lower truss roof, reduced elevation, and less second floor storage. The barn will be used for vehicle parking and storage.

Pete Carey asked Dan Merritt (compliance officer) for comments. Dan said his only concern is that any car coming down Hoyt Road and losing control could come down on the property, especially if trees are taken out. Ed Gempka asked if there is a guard rail in the area. Dan said there is only a post and wire guard rail and the speed limit is 50 mph. Karl Braconier said he had considered what could happen if a car came down behind the guard rail. There is a large stone or piece of ledge on that side, and he plans to bury excavated material there to make a kind of berm like a tractor trailer stop. That should be more effective than dead trees.

Ed Gempka asked about road noise. Karl Braconier said there is some, especially in the autumn and winter when the foliage has fallen. They feel the barn may help block it. Ed asked if there were any covenants on the deed. Karl answered in the negative. They are part of the Beaver Brook subdivision and the house was built in 1979, but there is not a related association.

Pete Carey asked if the Braconiers had heard from any abutters. Karl said no, but he had spoken with his neighbor across the highway who said he didn't have a problem with the plan.

Pete Carey solicited other public comment. There being none, the Board moved to a review of the five criteria for granting a variance and thereafter voted unanimously that all five criteria were satisfied in this case:

1. There would not be a diminution in value of surrounding properties as a result of the granting of this variance. Neighborhood values would likely increase as a result of the barn and proposed improvements to the property.
2. The granting of this variance would not be contrary to the public interest because there are no apparent problems, no safety issues, no impact on the neighbors, the lot is well treed and, based on Karl's representation, will remain so.
3. The hardship criterion is satisfied in this case to the extent that the road placement, drainage, and flooding conditions of the property make an area variance necessary in order to allow the development as designed, and the same benefit cannot be achieved by some other reasonably feasible method. The Board concluded the owner had reasonably considered and appropriately

ruled out all other options.

4. By granting this variance substantial justice will be done as it allows the property owner to make appropriate use of his property.
5. Granting a variance in this case would not be contrary to the spirit of the ordinance. The proposed building and its intended uses are completely consistent with the spirit of the ordinance.

Ed Gempka moved and Roger LaFontaine seconded approving the appeal submitted by Karl Braconier for a setback waiver concerning Article IV, Section H of the Zoning Ordinance in order to build a 40 foot by 40 foot barn to replace an existing barn on property located at 295 North Mayhew Turnpike/Route 3A, Tax Map 1-BP-5, in the Rural Zone. PASSED

Roger LaFontaine asked whether Dan Merritt would be checking on the progress of the building. Dan said Karl will call him if any questions come up. Pete Carey explained the decision notice, appeal, and rehearing process. He cautioned that any property owner proceeding with construction before the end of the 30-day appeal period does so at their own risk.

Case #213, Kenny appeal, Onaway Point Road, Tax Map 6.016, in the Lake Zone

Bruce Barnard and Bill Kenny presented the appeal. They went over the tax maps, surveys, septic plans, and architectural drawings and elevations. They described in detail the abutting properties and the nature of the land. Bruce said he suggested to Bill that if the appeal is granted to have a re-survey of the long boundary line to verify measurements. Pete Carey asked whether the brook on the map is a named waterway. It is not. Bruce showed the pump-up septic design approved by the State. The State approval is for a two-bedroom system—the minimum required by the State. The current cottage is open-concept (one big room) with no existing septic system. The new septic system will be a drive-over system, so you can drive and park over it. The plan is amendable until the building proposal is approved and the ground work is done, and if no impediments are found, it can be built to plan specifications. If the septic system installer runs into obstacles such as ledge, they can move it around as long as the system capacity (two bedrooms) doesn't change. The plan was done for Lee Fortescue to be used for the sale of the property. It is transferable to current owners, regardless of the name on the plan. Pete Carey and Bruce discussed pump-up or gravity systems and noted that the lot had been staked earlier that day before Pete visited. They discussed the test pit, which didn't hit ledge, and talked about a surface boulder as a feature Bill Kenny wants to keep. Bill said he would like to keep all the trees. Bruce talked about septic venting and using a charcoal filter to prevent any odors coming out of the septic system.

Neighbor Tom Molloy has been gracious about allowing access across his land because he has an open lot. He said that he would continue to grant Bill Kenny access across his land during the construction of the house. Pete Carey asked Tom Molloy if he is a seasonal resident. Tom said he lives in his Onaway Point house during the summer and lives with friends in Bridgewater off season.

Bruce Barnard reviewed the architect's plan, which were done over the survey and are accurate within a foot or two. Currently, the cottage is very close to the beach. Its deck touches the southern boundary line. The proposal contemplates moving the building back more than fifty feet from the

high water mark and ten feet from the southern boundary line. It improves privacy for owners and abutters and offers greater, more protective buffer to the lake. There was some discussion about measurements. All measurements are to the drip edge—not the foundation—of the proposed building. Bruce pointed out that in the application's building description, he made an error by saying the proposed building would be a two and one-half story, two-bedroom cottage. The design is actually for one and a half stories on top of a ground floor walkout level, conforming to the slope of the land. It will be 32 feet long and 22 feet wide, from drip edge to drip edge, an unusual size but it fits the lot well. The current footprint is 25 feet wide, including deck, and 27 feet long. The design of the proposed house is consistent with other nearby homes, particularly Virginia Shope's house just north of the Lucarellis' lot.

Roger LaFontaine asked why the proposed building is situated where it is, rather than still farther back on the lot. Bruce Barnard said it is for the sake of privacy. The Lucarelli lot is used as a beach lot, and they have to walk across to get to it. Perhaps people used to drive down, but it is mostly brushed in at this point. Roger and Pete Carey asked about sizes of other lots nearby and who might want to build in the future. Bill Kenny talked about various alternatives when he and Brackley were walking the land. Roger LaFontaine expressed concerns about water levels in view of recent rains. He asked whether there would be any change to the shorefront appearance of the property; Bruce and Bill answered in the negative.

Bill Kenny said his goal is to build a 1950s Adirondack style cottage just slightly bigger than the existing structure to fit their family. It will be stick-built, not post and beam, in natural colors that blend with the landscape. It will be a cottage that fits in with its environment and has an old-time feel. It will be heated and suitable for year-round use.

Roger LaFontaine expressed his personal reservations about the proposed house. With only one-fifth of an acre lot; the existing small cottage is in keeping with the Town. To replace it with something bigger sets a worrisome precedent. He concluded that he does not want to see Hebron look like other towns—all crowded together.

Pete Carey asked for public comment. Neighbor Tom Molloy said he won't even be able to see the new house. It won't obstruct his view or affect his property at all.

Roger LaFontaine asked about zoning changes and how they affect this application. Bruce Barnard said not at all as long as they meet all the health and safety requirements. He talked about the history of lake water levels, flooding and recent flood plain mapping. He said he always plans for a foundation at least a foot above the flood stage. Roger LaFontaine said the point is the farther back you go, the more insurance you get. Bill Kenny and Bruce Barnard talked about the lay of the land, patterns of debris from recent high water, and where water flows on the property.

Roger LaFontaine brought up elevations, and Bruce said the maximum planned elevation is 25 feet and even if they add a foot for floor joists, it's only 26 feet.

Tom Gump asked why the setback is 25 feet on one side and ten feet on the other. Bruce Barnard replied that way one side is conforming so only one waiver is needed. He added this placement provides maximum privacy for abutters.

Pete Carey asked that Bruce confirm the dimensions of the current and proposed cottages. Bruce

said there will be no balconies, nothing cantilevered, and no deck. The ground floor is where the kids' space will be, and there will be a loft bedroom for the parents. From the main room, you just walk out onto the beach.

Roger LaFontaine asked if any of the old trees will be cut. Bill Kenny said they will keep as many of the trees and boulders as possible. Bruce Barnard discussed the Shoreline Protection Act's allowance for a 15-foot envelope for moving construction equipment around. He proposed a 10-foot building envelope on each side.

Roger LaFontaine noted an installation disclaimer on the septic plan. Bruce Barnard said unless he is the installer as well as the designer, he would never assume liability for the installation. Each service is licensed, and the State inspects it when it is complete.

Roger LaFontaine asked about the water source. Bruce Barnard said the State wants the septic designer to show where a well could go. In this case, they probably locate the well as shown on the map. Roger expressed his concern about the distance of the well from the septic system. Bruce said it must be at least 50 feet to the tank and 75 feet to the bed.

Pete Carey solicited comments from the compliance officer. Dan Merritt's only comment was that the plan was well thought out.

Pete Carey noted for the record that on 4/14/06, the applicants applied for a building permit, and on 5/15/06, they filed an appeal application. The case process has thus far been timely, consistent with the law and regulations. Pete also noted that public and abutters' notices were accomplished in accordance with law.

Bruce Barnard summarized his conversations with abutters and indicated that Bill Lucarelli had expressed his concerns in writing. Pete Carey reviewed his conversation with Mr. Lucarelli and read aloud several emails (on file) and Bill Lucarelli's letter. Pete asked Bruce to respond to Mr. Lucarelli's concerns.

Bruce Barnard said he appreciates Mr. Lucarelli's conflict of interest concerns, but pointed out it is perfectly legal for a person to do both septic system design and to represent and/or assist an applicant through the ZBA appeal process. Bruce responded to the other points. He conceded there has been flooding, but added the proposed plan will improve the situation. He stated that he had anticipated and addressed most of Mr. Lucarelli's other points during the course of his initial presentation. Ed Gempka said the Lucarelli letter contains many unverifiable assumptions. Bruce Barnard pointed out one example, saying it was Peter Fortescue himself who directed the septic design so that his house and property would be more marketable. Pete Carey summarized Mr. Lucarelli's major concerns. His bottom line is that the proposed house is too big for the lot.

Roger LaFontaine again expressed his concern about the precedent-setting nature of this case. Again, Bruce highlighted the advantages and less nonconforming nature of the proposed house plan. Pete Carey shared Roger's concern that the Board needs to seriously weigh whether it is jumping on a slippery slope in terms of setting precedents. The Lucarellis' lot is just as small (only one-fifth of an acre) and even narrower. Will this give him and others similarly situated the impression they can build on their lots? Pointing out that his client is essentially replacing an existing structure, Bruce Barnard cited as a close parallel to the instant case the Bogart appeal,

involving an even smaller lot, closer to a water way. He observed a number of similarities to this case. Pete Carey agreed, saying that, like the Bogart case, the Kenny plan involved replacing an existing structure and represented a considerable improvement to the property in zoning compliance and environmental conservation terms. More specifically, the new construction poses much less of a side setback problem, takes the house out of the lakeshore setback area, creates a more natural shoreline, and puts the septic system even farther back away from the lake.

Ed Gempka expressed his opinion that the application was very thoroughly developed and presented. Roger LaFontaine said personally he is against the plan, but legally he can't see grounds to deny it, based on the area variance criteria.

There being no other public or other comment, the Board proceeded to review the five criteria for granting a variance. By unanimous vote, the Board members agreed that all the variance criteria were satisfied in this case:

1. There would not be any diminution in value of surrounding properties as a result of granting this variance. It was agreed that neighborhood values would likely be enhanced by the proposed new house. Pete Carey noted that the proposed cottage will be farther back from the lake and farther back from the southern boundary line and in both respects therefore less nonconforming. Its placement on the lot will improve the neighbors' privacy, and its septic system will be even farther removed from the lake, satisfying environmental concerns. Ed Gempka observed that the proposed cottage will be a significant improvement over the existing structure. Roger LaFontaine paraphrased the owner's commitment that the house will be Adirondack style with subdued exterior colors consistent with the submitted plans, it will blend into the landscape, use natural materials whenever possible, have night-sky type lighting (downward pointed to light the earth rather than the skyline) and that the basement floor will be above the flood plain by at least one foot.
2. The granting of this variance would not be contrary to the public interest for many of the same reasons indicated in the subparagraph immediately above. With ample setback distance on the Lucarelli side, ten-foot setback on the Molloy side (to which the Molloy's agreed), and greater setback from the lake shore, the proposed construction is consistent with the public interest.
3. The particular conditions of this property make an area variance necessary in order to allow the development as designed, and the same benefit cannot be achieved by some other reasonably feasible method. With few options on this narrow one-fifth acre lot, the applicant has put forward a plan that is less nonconforming than the current house situation and takes into greater account the privacy of neighbors on both sides of his lot. Roger LaFontaine added that the variance is all the more necessary given the owner's intentions to use the house year-round.
4. By granting this variance substantial justice would be done because it allows the owners to make appropriate use of their property.
5. Granting a variance in this case would not be contrary to the spirit of the ordinance because, as Ed Gempka summarized, the proposed cottage will be a vast improvement and will make the property less non-conforming.

Pete Carey asked Bill Kenny if he would accept conditions to the approval such as minimal tree

cutting, especially of older trees. Bill Kenny replied in the affirmative, saying that he will do everything in his power to save trees unless a tree prevents construction. Pete asked Bruce to suggest reasonable language, and together Bruce and the Board members agreed to the following conditions of variance approval:

1. A ten foot building envelope shall be used for construction, and access to the construction site will be through the Molloy lot (Tax Map 6-OP-1)
2. Any access from Tax Map 6-OP-1 will require restoration of any trees or shrubs removed.
3. Any trees within 50 feet of the shore line that have to be removed for any reason will be replaced.
4. The applicant will have a restoration plan in place before construction starts
5. There will be certification by pin and string for footing foundations to make sure there is at least ten feet to the property line, and this will be filed with the Town
6. There will be certification at installation of concrete walls before any wood is added and this, too, will be filed with the Town
7. The house will be Adirondack style with subdued exterior colors consistent with the plans submitted with the appeal, it will blend into the landscape, use natural materials whenever possible and have night-sky type lighting.
8. The basement floor will be above the flood plain by at least one foot.

Ed Gempk moved/Tom Gumpp seconded granting the appeal submitted by William A. Kenny for a setback waiver concerning Article IV, Section H of the Zoning Ordinance in order to replace an existing cottage with a new one and one-half story cottage on property located at Onaway Point Road, Tax Map 6.016, in the Lake Zone, with the following conditions:

- 1. A ten foot building envelope shall be used for construction, and access to the construction site will be through the Molloy lot (Tax Map 6-OP-1).**
- 2. Any access from Tax Map 6-OP-1 will require restoration of any trees or shrubs removed.**
- 3. Any trees within 50 feet of the shore line that have to be removed for any reason will be replaced.**
- 4. The applicant will have a restoration plan in place before construction starts**
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- 6. There will be certification at installation of concrete walls before any wood is added and this, too, will be filed with the Town.**

7. **The house will be Adirondack style with subdued exterior colors consistent with the plans submitted with the appeal, it will blend into the landscape, use natural materials whenever possible and have night-sky type lighting.**
8. **The basement floor will be above the flood plain by at least one foot**

PASSED

Pete Carey explained the decision notice, appeal, and rehearing process. He cautioned that any property owner proceeding with construction before the end of the 30-day appeal period does so at their own risk.

The Board members reviewed the minutes of 4/18/06.

Ed Gempka moved/Tom Gumpp seconded approval of the minutes of 4/18/06 as written. PASSED

Ed Gempka moved/Tom Gumpp seconded adjournment of the hearing and meeting. PASSED

The meeting/hearing adjourned at 9:42 PM.

SUMMARY OF MOTIONS:

Ed Gempka moved and Roger LaFontaine seconded approving the appeal submitted by Karl Braconier for a setback waiver concerning Article IV, Section H of the Zoning Ordinance in order to build a 40 foot by 40 foot barn to replace an existing barn on property located at 295 North Mayhew Turnpike/Route 3A, Tax Map 1-BP-5, in the Rural Zone. PASSED

Ed Gempka moved/Tom Gumpp seconded granting the appeal submitted by William A. Kenny for a setback waiver concerning Article IV, Section H of the Zoning Ordinance in order to replace an existing cottage with a new one and one-half story cottage on property located at Onaway Point Road, Tax Map 6.016, in the Lake Zone, with the following conditions:

1. **A ten foot building envelope shall be used for construction, and access to the construction site will be through the Molloy lot (Tax Map 6-OP-1).**
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3. **Any trees within 50 feet of the shore line that have to be removed for any reason will be replaced.**
4. **The applicant will have a restoration plan in place before construction starts**
5. **There will be certification by pin and string for footing foundations to make sure there is at least ten feet to the property line, and this will be filed with the Town**
6. **There will be certification at installation of concrete walls before any wood is added and this, too, will be filed with the Town.**

- 7. The house will be Adirondack style with subdued exterior colors consistent with the plans submitted with the appeal, it will blend into the landscape, use natural materials whenever possible and have night-sky type lighting.**
- 8. The basement floor will be above the flood plain by at least one foot**

PASSED

Ed Gempka moved/Tom Gumpp seconded approval of the minutes of 4/18/06 as written.

PASSED

Ed Gempka moved/Tom Gumpp seconded adjournment of the hearing and meeting. PASSED