

Town of Johnsburg  
Zoning Board of Appeals  
Tannery Pond  
June 7, 2021

**Attendance:** Allen, Jim Jones, Phil Goodman, Riesha Thissell, ZEO Danae Tucker, and Secretary Joann Morehouse

**ABSENT:** Cathy Allen, Kevin Bean

**Applicants:** Daniel Nauen, Shawn Warrington, Judy Thomson, and Steve Thomson

**Guests:** None

**Public hearing:** Meeting called to order 7:25 pm by Co-Chair Phil Goodman.

**V-03-2021-Schmale –197 13<sup>th</sup> Lake Rd - Tax Map # 30.-2-50**

Mr. Warrington was present to represent Mr. Schmale. Mr. Schmale is looking for 14 feet of relief from the front setback in order to place a garage on his property.

**V-04-2021-Thomson-31 Cross Rd-Tax Map # 178.4-1-6**

Mr. & Mrs. Thomson are seeking 10 feet of setback relief for a screened porch they are looking to build.

**V-02-2021-Nauen-48 Main Street - Tax Map # 66.10-1-15**

Mr. Nauen is seeking a use variance; he would like to have the whole building as a rental home and at present it is designated for only business. Since it is on Main Street in HB1 zoning the street level of any building is required to be a business Mr. Nauen is hoping to change that so that he can have a multiple family dwelling there.

Mr. Jones made a motion to close the public hearing at 7:55 seconded by Mrs. Thissell all in favor.

**Call Regular meeting to order:** Meeting called to order by Mr. Goodman at 7:56

**V-03-2021-Schmale –197 13<sup>th</sup> Lake Rd - Tax Map # 30.-2-50**

6/7/21

This is a request for an area variance of 14 feet of front-line setback relief to build a garage at his home.

Background: Mr. Schmale requested front line setback relief for a garage at his residence 197 13<sup>th</sup> Lake Road, in North River, NY (Tax map # 30.-2-50) The town ordinance requires a minimum distance of 40 feet. Mr. Schmale has requested 14 feet of relief.

The ZBA moved to grant 14 feet of building setback relief and approve area variance application V-03-2021.

Rationale:

- 1) Granting this relief will not cause an undeniable change to the character of the neighborhood.
- 2) The footprint of the garage is designed to fit into the limitations of the lot.
- 3) At 14 feet, the variance is not substantial. The garage will be almost the same distance from the road as the residence
- 4) The physical and environmental conditions in the neighborhood will not be negatively impacted.
- 5) The condition is self-created but does not prohibit the granting of the variance.

Motion made by James Jones, seconded by Riesha Thissell, and passed 3-0.

### **V-04-2021-Thomson-31 Cross Rd-Tax Map # 178.4-1-6**

6/7/21

Town of Johnsburg Zoning Board of Appeals Variance # V-04-2021

This is a request for an area variance of 10 feet of sideline setback relief to build a screen porch on his home.

Background: Mr. Thomson requested sideline setback relief to add a screen porch to his residence at 31 Cross Road Johnsburg, NY (Tax map # 178.4 -1-6) The town ordinance requires a minimum distance of 30 feet. Mr. Thomson has requested 10 feet of relief.

The ZBA moved to grant 10 feet of building setback relief and approve area variance application V-04-2021.

Rationale:

- 1) Granting this relief will not cause an undeniable change to the character of the neighborhood.
- 2) There are no structures currently near the line on the adjoining property, nor are any likely due to the physical characteristics of the land.
- 3) At 10 feet, the variance is not substantial.
- 4) The physical and environmental conditions in the neighborhood will not be negatively impacted.
- 5) The condition is self-created but does not prohibit the granting of the variance.

Motion made by Riesha Thissell, seconded by Janes Jones, and passed 3-0.

**V-02-2021-Nauen-48 Main Street - Tax Map # 66.10-1-15**

Mr. Nauen gave a presentation of the history of his involvement with this property and presented his answer to the OTTO standards.

6/7/21

Town of Johnsburg Zoning Board of Appeals Variance # V-02-2021

This is a request for a use variance to reinstate residential status to a building at 248 Main Street, North Creek, NY.

Background: Mr. Nauen wants a building he purchased to have its classification as a residence reinstated (the property was grandfathered in as a residence until a previous owner requested it be classified as a business.) The property is located at 248 Main Street North Creek, NY (Tax map # 66.10-2-15).

Mr. Nauen's request for this variance was originally tabled because the ZBA wanted more documentation to support his request. The board in particular desired Mr. Nauen answer the questions of the so-called Otto standard, (see attached materials).

The Town of Johnsburg does not maintain a "variance book" to document previously granted variances and Mr. Nauen purchased the property that the real estate office had marketed as a residential building. Mr. Nauen's research also revealed that the Town of Johnsburg's Tax Map records also indicated the property was coded as a residential property. It was a surprise to Mr. Nauen while seeking permission to do some renovations that the property was not residential, but commercial. Physical characteristics of the building itself also gave the new owner no indication that the building was not entirely residential.

The ZBA moved to grant use variance application V-02-2021 to re-classify the building as residential.

Rationale:

1. **Reasonable Return.** Recent economic conditions have made it difficult, if not impossible, to market this property as a storefront business. Attempts to rent as a business have proved to be too difficult. Numerous businesses on Main Street have been shuttered due to an undesirable and changing economy. This property, in particular, has been modeled as a residence and would require substantial investment to meet building codes for a business. There is also insufficient parking to accommodate a business that requires foot traffic for profitability. Recent purchase prices of the property have been pushing downward over the past number of years.
2. **Unique circumstance.** This property is unique because of the errors in the way it was marketed by real estate, and improperly coded as a residence by the town.

3. **Character of the neighborhood.** Before a previous owner requested the change to commercial this property had existed as a residential rental property for many years. Reclassifying it as residential would merely maintain a status that had previously existed.
4. **Self-created Hardship.** The status of this property classification mix-up is the shared responsibility of a variety of sources. It appears that the previous owner misled the real estate agent by withholding information on the change of the property from grandfathered residential to commercial classification. The real estate agent then improperly listed the property as residential. The town never changed the code on the tax records from residential to commercial. Also, because the town does not maintain a variance book the only way to seek out previous variance grants would be to scour years and years of meeting minutes. From the documentation he provided it appears that Mr. Nauen used “due diligence” when he purchased to property as a residential listing. The hardship was not self-created.

Motion made by James Jones, seconded by Riesha Thissell, and passed 3-0.

**Approval of Minutes:** Mrs. Thissell made a motion to approve May meeting minutes, seconded by Mr. Jones all in favor

**ZEO Report:** none

Mr. Jones made a motion to close meeting at 8:10pm, seconded by Mrs. Thissell all in favor.

Respectfully,

Joann M. Morehouse

**Next Zoning Board meeting scheduled  
for July 5, 2021 at the Tannery Pond**