

Town of Johnsburg  
Zoning Board of Appeals  
Tannery Pond Community Center  
April 3, 2017

**ZBA Members:** Cathy Allen, Phillip Goodman, James Jones, Secretary Joann M. Morehouse, and Danae Tucker ZEO

**Applicants:** Philip Murphy, Frank Noel, and Patsy Wilson-Noel

**Guests:** Bob Nettle, Victoria Glover, Jamie Bruce, Amara Mitchell, Savanna Berg, and Christian Holt

**Call meeting to order:** Meeting called to order by Chairperson Cathy Allen at 7:06pm

**Public Hearing:**

V-01-2017-Noel-Tax Map#133.8-1-48-2696 Garnet Lake Rd., Johnsburg

Mr. & Mrs. Noel's home burned down and they are requesting a setback relief on the east side line of 12 feet narrowing down to 3 feet when they rebuild as their plan is to replace the home with a single story instead of another two story.

Motion to close public hearing made by Mr. Goodman, seconded by Mr. Jones all in favor.

Mrs. Allen opened the regular meeting of the ZBA

V-01-2017-Noel-2696 Garnet Lake Rd. Johnsburg

4/3/17 Town of Johnsburg Zoning Board of Appeals Variance # V-01-2017 (Tax map # 133.8-1-48) This is a request for an area variance to grant setback relief on the east side line of 12 feet narrowing down to 3 feet (the lot is wider towards the front, and narrows as it approaches the back line). Background: The Noel's two story house (Tax map # 133.8-1-48) burned down last fall and they are requesting to build a replacement house on the same site. They are entitled to rebuild on the footprint of the old house because of their grandfathered building rights, but are requesting setback relief to accommodate a replacement single story house that will be cover a larger footprint. The setback relief required would be 12 feet narrowing down to 3 feet the east sideline Philip Goodman moved to grant the Noel's 12 feet to 3 feet of west side line relief, and approve variance application V-01-2017. Rationale: 1) Granting this relief will not cause an undesirable change to the character of the neighborhood because the new residence will simply replace the one destroyed by the fire, only the footprint will change. 2) Because the lot limitations already exist, the benefit cannot be otherwise attained without the variance. A stick build two story house is a much more expensive option for the Noel's than a modular replacement (this option will help rectify a hardship situation). 3) The variance is not substantial. 4) The neighborhood was already a configuration of oddly shaped, undersized lots created back in the 1960's to accommodate the

family houses of the original landowner. For example, one house and its accompanying garage were already on different lots. This simple house rebuild will not be otherwise negatively impact the existing neighborhood. Replacing the burned-out shell of a building will be safer and better environmentally and will benefit both the Noel's and their neighbors. 5) The condition on the ground is self-created, but the circumstance (replacing the Noel's home that was destroyed by fire on the lot they already owned) necessitating the variance are not, and does not preclude the granting of the variance. Motion seconded by Cathy Allen. Motion passed 3-0

V-02-2017- Murphy-Tax Map#178.4-1-35-179 Garnet Lake Rd., Johnsburg

Mr. Murphy recently purchased the property at 179 Garnet Lake with the intention of rebuilding the house that burnt. Mr. Murphy is requesting a setback relief on the south side of 1.3 feet, on the north side of 7.4 feet and in the front of 5.3 feet, because he wants to move the house farther away from the lake than it was.

Motion to close public hearing made by Mr. Goodman, seconded by Mrs. Allen all in favor.

Mrs. Allen re-opened the regular meeting of the ZBA

V-02-2017 Murphy-179 Garnet Lake Rd. Johnsburg

4/3/17 Town of Johnsburg Zoning Board of Appeals Variance # V-02-2017 (178.4-1-35) This is a request for an area variance to grant setback relief on the south side of 7.4 feet, on the north side of 7.0 feet and in the front of 5.3 feet. Background: Mr. Murphy owns a house on the Garnet Lake road (178.4-1-35) across the road from the lake that burned down. He would like to build a replacement house on the same site. He is entitled to rebuild on the footprint of the old house because of his grandfathered building rights, but he wants to rebuild a similar sized house farther back on his property from the road and the lake. To do so he needs setback relief. The setback relief required would be 7.4 feet on the south side, 7.0 feet on the north side, and 5.3 feet on the front. Philip Goodman moved to grant 7.4 feet of relief on the south side, 7.0 feet on the north side and 5.3 feet on the front and to approve variance application V-02-2017. Rationale: 1) Granting this relief will not cause an undesirable change to the character of the neighborhood because the new residence will simply replace the one destroyed by the fire, only the footprint will change. 2) Because of the lay of the land, the building can only be moved back a limited distance. Due to the lot limitations, the benefit cannot be otherwise attained without the variance. 3) The variance is not substantial. 4) The environment will not be adversely impacted by the variance, the rebuilt house will be virtually the same size, but just a few feet farther back. The condition will actually be beneficial to the neighborhood because the new building will be further from the road and the lake. 5) The condition on the ground is self-created, but the circumstance, replacing the burnt-out house, necessitating the relief is not, and does not preclude the granting of the variance. Motion seconded by Cathy Allen. Motion passed 3-0

Motion to adjourn regular meeting and reopen by Mr. Goodman, seconded by Mr. Jones public hearing at 7:42pm for Interpretation of Zoning Law all in favor.

Motion to adjourn public meeting and reopen regular meeting at 8:17pm made by Mrs. Allen, seconded by Mr. Goodman all in favor.

Town of Johnsburg Zoning Board of Appeals (ZBA) Interpretation of the definition of Tourist Accommodations in our Land Use Plan. 4/3/2017 At the March meeting of the Town of Johnsburg Zoning Board of Appeals we had a detailed discussion about interpreting parts of the Land Use Plan's definition of a Tourist Accommodation: Tourist Accommodation. Any hotel, motel, resort, tourist cabin or similar facility designed to house the general public, excepting a Bed and Breakfast establishment. Specifically, we discussed whether an establishment including an efficiency unit, or units, would be considered a "similar facility," and who would be considered to be the "the general public." Background A local resident came to the ZEO with a question about whether or not he could get use variances to build multiple efficiency units to rent out in a portion of the business district in the hamlet of North Creek. Variances would be required for several different structures on as many as four separate contiguous lots. The Use Variances would be required because the desired use is not allowable in the business district as defined and delineated in the land use plan. In discussions with the ZEO I (Philip Goodman ZBA Member) gave her my opinion that a use variance would not be possible in this circumstance because it would clearly not meet the so-called OTTO standard as outlined by zoning case law in NY State courts. One of the specific conditions of the OTTO standard is that the awarding of a use variance must be a unique circumstance, and not a general issue in the area where the variance is being requested. Granting multiple use variances on contiguous lots would be a de-facto rezoning of an area and beyond the purview of the zoning board. Because a use variance is clearly not an option and because a Tourist Accommodation is an acceptable use the business, district the question came up about whether or not an efficiency unit would be included in the "similar facility" part of the definition. The zoning board does have the authority, if not the responsibility, to interpret vague parts of the land use plan. The 'efficiency unit' question has been asked several times before, including once recently, and should be addressed. Interpretation At the April 3rd meeting of the ZBA, I moved that efficiency units should be considered to be similar facilities to hotels, motels, resorts, and tourist cabins as listed in the definition of tourist accommodations in our land use plan. I also move that the general public includes literally anyone coming in off the street like any other person desiring to do business in one of our fine commercial establishments in the Town of Johnsburg To further clarify the issue the ZBA concludes that an efficiency unit is one where an individual, or a family, can come and take up residence for a night, a week, or even a month or so in a manner sufficient enough to meet their needs to lounge, sleep, and even prepare their meals. Using that same logic, we also determined that, like a hotel suite, an efficiency unit could include a kitchen, a lounging area, and even several bedrooms to accommodate multiple guests. The ZBA further determines, to avoid mixed uses in the same building, and to provide proper consumer safeguards, efficiency units should be applied for as commercial establishments. Rational Renting efficiency units is a common business endeavor in tourism economies. It is not unusual in tourist areas for efficiency units to be rented out for shorter durations during peak times at higher rates, and for longer durations for lower rates during off-peak times. When my daughter was a freshman in college she rented an efficiency unit by the month in Bolton during the September to May school year that was rented for a much higher rate by the day or week to tourists during the summer months.

Someone else commented during the meeting in March that a relative was currently renting under the same circumstance in the Village of Lake George. Such conditions allow businesses to pay the bills during off-season so they can make their profits during peak times. An efficiency unit would be roughly equivalent in scope to a tourist cabin which is specifically mentioned in the definition. Cabins were a common type of tourist accommodation in Johnsbury's past, and still exist in several locations within the town. We think that the fact that Bed and Breakfasts were specifically excluded from the definition of Tourist Accommodation helps to clarify that the authors of our land use plan wanted to prevent establishments where mixed uses were allowed (specifically establishments which were both businesses and primary residences). We think that we can differentiate efficiency units by requiring them to apply for their construction as strictly commercial establishments. The regulations governing commercial endeavors will also provide key consumer safeguards for individuals renting these efficiency units. Moved by Philip Goodman Member, Town of Johnsbury Zoning Board of Appeals Seconded by James Jones Passed 3-0

Motion to close meeting made by Mrs. Allen at 8:31pm, seconded by Mr. Goodman all in favor.

Respectfully,

Joann M. Morehouse

Next Zoning Board meeting scheduled for May 1, 2017 at Tannery Pond