

**Minutes of the Town of Johnsbury Zoning Board of Appeals Meeting  
July 2, 2012**

Minutes of the public hearing and regular meeting of the Zoning Board of Appeals of the Town of Johnsbury held on Monday, July 2, 2012 at the Tannery Pond Community Center, North Creek, NY.

Roll call showed the following persons present: Chairperson Cathy Allen, Jim Jones and Phil Goodman.

Variance 01-2012 – Sangster, Parcel # Seeking relief of 10 foot set back for installation of new septic. Mr. Sangster is seeking a variance of 3.8 feet. No wells will be affected on neighboring properties. The proposed septic is at least 100' from the brook and all wells. A motion to close Public hearing was made by Mr. Goodman, seconded by Mr. Jones – all in favor.

Chairperson Allen opened the regular meeting at 7:13p

Mr. Sangster clarified with the board that the set back was being sought for both sides of the septic system due to the proximity to the house and side line, which will be located approximately 6.2 feet from both. Mr. Goodman made a motion to grant the area variance of 3.8 feet from both sides – Rational being the board has been very consistent over the years and obviously “area variances” don’t have the required standards that “use variances” have, and the board has been consistent in approving them when they actually approve the state of the lot. With this variance there will be a new expansive septic system and leach field on the side of the property vs. in the front. It is limited by the size of the lot. Mr. Jones seconded the motion for approval – with all members voting in favor, the motion is passed.

Mr. Goodman started a discussion acting on an email received via the secretary regarding a variance issued on parcel 66.10-1-29 originally owned by Keitan Millington – Originally in 2006 he was going to put a stick residence on the parcel and a use variance was granted for such. It was renewed again in 2008 when the plans changed to putting a trailer on the lot instead of a stick built. The variances go the property and not the land owner, so when the property was sold to John McAlonen, there was a problem. He differed to Danae Tucker, Town ZEO, who stated she had issued a zoning compliance to place a trailer on the property per the variance, unaware that there was discussion prior to approval of the variance that was not noted on the approval.

Rational provided by Mr. Goodman–Coon technical series applies when re-hearing an old variance, “no new decision of the board may be made if the board finds that it would prejudice the rights of any persons who acted in good faith reliance on the original decision” – Mr. Goodman went on to explain how he felt Mrs. Tucker was doing an excellent job and was quite possibly the best ZEO the town has had. A document was issued because things were buried in the minutes, and it took time to find things. Folks were going on an original assumption, and that assumption ended up being different. He also found that when a variance has been passed and in place, this is based a 1974 court case called the matter of NY Life insurance company vs. Galvin; a zoning board had granted a variance that was conditional like this as to when building was supposed to commence. There were extenuating circumstances and it ended up that the building was building was not going to commence on the date that the variance said. They lawyer for the Zoning Board, acting on his own, granted an extension to make it possible for the building to take place and it was taken to court. The court found that where a variance has been granted by the Zoning Board of Appeals, the Boards attorney, acting with actual or apparent authority, may agree to expend the time to build the improvements permitted by the variance. The more important part of this perhaps is that it states that a second meeting and vote of the board are not required. Further, it is not necessary for an application for extension to be treated as a new application for which a public hearing and notice would be mandatory. Because of this court case, we have the authority to extend the date of commencement of building at our discretion, and if we so vote, we can extend that period of time to make the placing of this trailer legal under our ordinance and under the laws of the State of New York. Mr. Goodman said he would provide the printed data for the file and in addition compose a notice of action with rational for the record (see below\*\*). Mr. Goodman

made a motion that the 2008 date be taken and extend that timeline from a two year that was written in the minutes to a five year period. That would put it into 2013 sometime and that would make this an allowable action. Every body acted on good faith here. These things, years ago, tended to get buried and unless you went through years and years of minutes, you would have a difficult time even finding it. He feels the town's ZEO and the landowners all acted in good faith so he makes the motion based on all that rational that we extend that to five years from the 2008 date of the original variance. Motion made by Mr. Goodman, seconded by Mr. Jones – all in favor.

\*\*Variance 163-06A – McAlonen, Parcel # 66.10-1-29

It has recently been brought to our attention that the Town of Johnsburg Zoning Enforcement Officer mistakenly issued the current owner of Town of Johnsburg parcel number 66.10-1-29 (off Ordway Lane in the Village of North Creek) a Certificate of Zoning Compliance to place a trailer on the lot based on Variance number 163-06A which had been passed by the ZBA on July 7, 2008. The variance in question was a use variance to place a residence (in this case a trailer) on a parcel in the business district. The variance had been given to the previous owner of the property, but because a variance is attached to the parcel and not the owner, the ZEO issued the compliance certificate to the current owner. Upon a subsequent reading of the ZBA's minutes however, the ZEO (who was not the ZEO at the time of the original variance) discovered that a building time limit of two years had been discussed at the time the variance was issued. The time limit at the time of the issuance of the compliance certificate had expired. After the certificate had been issued, and before the discovery of the expired building time limit the current owners of the parcel had contracted to have a trailer placed on the site.

On July 2, 2012 the ZBA passed a resolution to extend the building time limit to five years from the time of the original variance 163-06A based on the following rational.

The document entitled Zoning Board of Appeals, a part of the James A. Coon Government Technical Series, a publication provided to New York State Zoning Board's of Appeals for legal and procedural guidance states the following pertaining to a rehearing of a previously decided issue by the ZBA:

... no new decision of the board may be made if the board finds that it would prejudice the rights of any persons who acted in good faith reliance on the original decision.

We believe the current owners of the parcel acted in good faith when they contracted for the placement of the trailer based on their possession of a certificate of zoning compliance issued by the ZBA's enforcement officer.

Also, in the Matter of New York Life Ins. Co. v Galvin, 35 NY2d 52, 59 (1974), the New York Court of Appeals held that where a variance has been granted by a ZBA, a building time limit included as part of a variance may be subsequently extended by the Zoning Board without a new application for which a public notice and new hearing would be mandatory.

Based on the aforementioned rational the Town of Johnsburg Zoning Board of Appeals passed a resolution to extend the time limit for building (or placing a mobile home) on parcel 66.10-1-29 to five years from the date of the original passage of Variance # 163-06A (July 7, 2008).

Motion made by Philip Goodman

Seconded by James Jones

Passed by a vote of 3-0.

Motion to close the meeting by Mr. Goodman, seconded by Mr. Jones – all in favor (7:30pm)

Respectfully Submitted:

Cherie Ferguson, Secretary