

**TOWN OF SOMERSET  
ZONING BOARD OF APPEALS  
December 9, 2013**

Present: Herbert Linderman, Chairman  
Scott Ecker  
Frederick Leuer  
Joseph Provencher  
Kent Wakefield  
Morgan Jones Jr., Counsel

Notice of said meeting sent to the Lockport Union-Sun and Journal on December 3, 2013 with same notice being posted at the Town Hall and on the website on the same day.

Chairman Herbert Linderman called the meeting to order at 7:30PM.

**APPROVAL OF THE MINUTES**

On a motion of S. Ecker, seconded by K. Wakefield, the following resolution was  
ADOPTED Ayes 5 Linderman, Ecker, Leuer, Provencher, Wakefield  
Nays 0

Resolved the minutes of the November 26, 2013 meeting be approved as submitted.

**COMMUNICATIONS**

Code Enforcement Officer's monthly report for November was received and filed.

**RECONVENE PUBLIC HEARING FOR THOMAS TAYLOR**

Chairman Linderman reconvened the hearing from November 26, 2013 for Thomas Taylor, 1129 Carmer Road, to construct a pole barn at 7:35PM.

Chairman Linderman asked Mr. Taylor if Attorney Thomas Brandt is his representation.

Mr. Taylor said yes.

Attorney Brandt submitted a petition from the neighbors that are in favor of the project and presented a detailed layout. He stated the way the house sits, his view is sideways and the closer the building gets to the house the less view he would have. He said any other layout congests the property and right now he has some space in between the buildings. He said given where the trees are, the buildings are and where the septic is he has a reasonable reason to put the building where it is. He stated the sentiment of the neighbors as evidenced by the petition should be taken in account. He said it is not a detriment to the neighborhood and the building is well covered by the tree line. He said no problems will be created with ditching or drainage. He said it would not be harmful to the neighborhood.

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Chairman Linderman stated you mentioned Mr. Taylor's house view is sideways. He said there is one neighbor that doesn't exist yet and that is on the lot adjoining and by placing the building there, if that neighbor builds a house and follows the setbacks the zoning calls for, he would have to look at the back and side of Mr. Taylor's building and that would block their view. He said the present owner of the property was here and had no problem but if a new owner bought it; they are going to sacrifice their view for his view. He stated Mr. Taylor ignored the zoning code to begin with.

Attorney Brandt stated Mr. Taylor said the owner of that lot was here last month and had no problem.

Chairman Linderman they were and in his opinion, he is going to sacrifice the neighbor's view for his view. He stated Mr. Taylor ignored all the zoning codes to begin with.

Attorney Jones asked how much space there is behind where the septic system is installed on the rear lot line (east line).

Mr. Taylor said it is 60 feet from where the leach lines go off from the sand system to Mr. Langendorfer's property.

Chairman Linderman asked how close to scale is the drawing.

Mr. Taylor said the measurements are really close but is not to scale.

Chairman Linderman said you are showing 23 feet from the east wall of the proposed building to the west wall of the garage.

Mr. Taylor said the building sits in front of the garage.

Chairman Linderman said what we are talking about is 20 some feet that you are trying to infringe from the setback. He said it is 28 feet.

Attorney Jones said the drawing shows the house 150 feet from the center of the road.

Attorney Brandt stated Mr. Taylor has told him that in his lawyer's office there is a signed contract by the seller to sell the property to him.

Mr. Taylor said he met the Millers that night (Nov. 26, 2013) and talked out in the parking lot. He said Art Jackson and Joe Frasier worked it out and then the Millers and myself had to correct the lawyers on some things and the contract is waiting for my signature. He said he is taking care of other finances.

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Attorney Jones asked if he is going to move the building to that lot or won't you worry about it.

Mr. Taylor said he can't move the building. He said he doesn't have the finances to do that. He said the way he constructed it the lumber would be ruined. He stated  $\frac{3}{4}$  of the building is up and he stopped when Mark (CEO Remington) came over and told me to stop. He said he did not build it in vain or to make anybody mad. He said he wants to utilize the property he has and there is a lot of money sitting there that he will never recover from. He said he is trying to go through the channels.

Attorney Brandt stated the building is 61 feet from center line and there is a 50 foot right of way.

Chairman Linderman said he measured 60 feet off the center line of the road with a range finder to the nearest post.

Mr. Taylor said he measured with a walk wheel from the edge of the road.

Chairman Linderman said you have asked for a variance in an Ag district. He said this is not a barn but an accessory building as a barn requires 200 feet from the center line.

Mr. Taylor said it is a post frame building.

Attorney Jones said according to the code it is an accessory building.

Chairman Linderman said he believes the consensus is to grant the variance to allow the building in the front of the house but there is an infringement on the setback and he proposed to knock a wing off and that would make the setback a little closer to what it should be. He said going through the check list the infringement on the setback is substantial.

Attorney Brandt said he asking for a 22 foot variance.

Chairman Linderman said he is asking for more than 50%.

Code Enforcement Officer Remington stated is has to be 50 feet from the road right of way.

Attorney Brandt said he (Mr. Taylor) is asking for 22 feet and that is less than half and that is only one consideration. He said you (the Board) have to consider 5 factors. He said there is no undesirable impact on the neighborhood. He said all the neighbors are in favor of it and none have come in to oppose it.

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Chairman Linderman said he disagrees as you are referring to the present neighbors. He said there is a lot of land on both sides and houses could spring up. He said that is why we have zoning and should use the same reasoning for the next guy.

Attorney Brandt said he disagrees and that each case should be considered on its own. He said there are trees all around the property and blocking it. He said he understands the impact on the neighborhood in the future but the best proof is the current neighbors.

Attorney Jones said another factor is the house sits back 120 feet from the road where it could be 50 feet from the road and it balances out.

Attorney Brandt stated that is what caused the situation. He said the house is so far back and sheltered with woods. He said there is no impact on the character of the neighborhood now or in the future. He said a 40% variance could be substantial. He said you have to look at what is going on. He said in some cases a 1 foot variance could be considered substantial but here a 20 foot variance is not substantial because of the physical characteristics of the property. He said it is a practical difficulty situation. He said he preserves his view shed from his house and cuts down on the congestion of the property.

Chairman Linderman asked if the benefit can be achieved by other means feasible by the applicant with the placement of building.

Attorney Brandt said he could place the building and not ask for any variance but that would cause such congestion on the property, the property looks too crowded and would cause him to lose his view. He said the more congested it goes the more the view he will lose and those things have to be taken into account. He said it will not have an adverse impact on the physical or environmental conditions. He said it (hardship) was self created but that is not the only determining factor. He said it is a balancing situation.

With all persons desiring to be heard, Chairman Linderman closed the hearing at 7:55PM.

**NEGATIVE SEQR DECISION**

The Board reviewed the Environmental Impact Form in detail.

On a motion of S. Ecker, seconded by J. Provencher, the following resolution was

ADOPTED Ayes 5 Linderman, Ecker, Leuer, Provencher, Wakefield

Nays 0

Resolved in the matter of the application of **Thomas Taylor, 1129 Carmen Road, Barker, NY 14012** (Tax Map ID: 10.00-1-12.21) for a variance to build a 48 feet x 58 feet pole barn on a lot measuring 175 feet x 364.88 feet at 1129 Carmen Road in front of the principal building and approximately 28 feet from the road right of way, whereas Article III Sections 205-11B and Article VI Section 205-23 of the Code of the Town of Somerset states that all new construction must conform to the current setbacks as per the Town Zoning schedule, Town of Somerset Zoning Board of Appeals names itself Lead Agency and declares there will not be a negative impact on the environment based upon the application submitted.

**DECISION**

Extensive discussion ensued regarding if Mr. Taylor should take the building down, the situation being a self created hardship, the undeveloped neighborhood, sending the wrong message if allowing the variance to be granted 100%, argument about impairing the neighborhood, neighbors not being concerned, and not obtaining a building permit prior to building.

On a motion of F. Leuer, seconded by J. Provencher, the following resolution was

ADOPTED Ayes 3 Leuer, Provencher, Wakefield

Nays 2 Ecker, Linderman

**RESOLVED** that the application of **THOMAS TAYLOR** for 1129 Carmen Road, Barker, New York 14012, SHALL BE **APPROVED** IN ACCORDANCE WITH THE APPLICATION WITH THE FOLLOWING TERMS AND CONDITIONS:

1. This Variance shall conform to ordinances of the Town of Somerset in all other respects.
2. Any violation of the conditions shall be grounds for revocation of this permit.
3. The premises shall be kept neat and orderly.
4. A building permit must be obtained from the Code Enforcement Officer prior to commencing construction.

There being no further business, S. Ecker moved to adjourn the meeting at 8:10PM, seconded by K. Wakefield. Carried unanimously.

Respectfully submitted,

Rebecca A. Connolly, MMC  
Town Clerk/Secretary