

**TOWN OF SOMERSET  
ZONING BOARD OF APPEALS  
October 22, 2013**

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

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

**PUBLIC HEARINGS**

Chairman Linderman opened the public hearings at 7:31PM.

Clerk Connolly read the notice of said hearings that was duly published in the Lockport Union-Sun & Journal on October 7, 2013 with the same notice being posted on the same day at the Town Hall and on the website:

**JAMES E. FERINGTON, 8687 Lakeview Drive, Barker, New York**

**SBL # 2.14-1-92** for a variance to place a movable storage building measuring 10 feet x 18 feet on a vacant lot located on the south side of Lakeview Drive across from 8687 Lakeview Drive, whereas Article X, Section 205-34 (B) of the Code of the Town of Somerset states before there can be any accessory building or accessory use in a Residential Lake Shore District (RLS), there must first be a principle use or principle dwelling on the lot.

**DALE M. HOWARD, 8663 Huntington Beach, Barker, New York**

**SBL #2.14-1-91** for a variance to place a freestanding storage building measuring 12 feet x 24 feet on a vacant lot located on the south side of Lakeview Drive at the SE corner of Quaker Road, whereas Article X, Section 205-34 (B) of the Code of the Town of Somerset states before there can be any accessory building or accessory use in a Residential Lake Shore District (RLS), there must first be a principle use or principle dwelling on the lot.

Connolly stated all neighbors were notified with no written comments being received.

**HEARING - JAMES E. FERINGTON, 8687 Lakeview Drive, Barker, New York  
SBL # 2.14-1-92 – Variance for a Movable Storage Building**

Chairman Linderman asked Mr. Ferington how long he has owned the lot.

Mr. Ferington said he has owned 8687 (Lakeview Drive) for quite awhile and the lot since July 2006. He said the lot is 200' x 200'.

Chairman Linderman stated the lot adjoins Mr. Hogan.

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Mr. Ferington said it adjoins Mr. Hogan and Mr. Howard. He stated he needs a building to house a vehicle as he is disabled. He said he has two other properties down there and to get between the houses has been difficult. He stated he talked to the Zoning person and he has looked at my other homes. He stated the Zoning person said he does not have the space to put a building on those properties. He said he wants to place a premade Amish built building across the street (from his house) so he can securely place a handicapped vehicle in there.

Chairman Linderman asked if he has the vehicle now.

Mr. Ferington said no.

Chairman Linderman said you have other properties and how far apart are they.

Mr. Ferington said he owns 8687 on the lake side which is across the street from the lot; he owns 8693 which is east and 8699 which is farther east all on the lake side.

Chairman Linderman asked if they are occupied homes.

Mr. Ferington said one is occupied for three months of the year, one is a guest house and occupied during the summer. He said they are year round homes.

Chairman Linderman asked if there is no place on the lake side properties for the building.

Mr. Ferington said the zoning individual said it would be difficult to place a building due to the size of the lots and utilities.

Chairman Linderman asked how big the other lots are.

Mr. Ferington said the primary lot is 77 feet wide, second is 50 feet and the third is 50 feet.

Chairman Linderman asked who owns the right of way.

Mr. Ferington said he thought the Town owned it. He said there are a lot of utilities there and he thought it is was the Town's.

Chairman Linderman said you want to place the building 25' and 65' from the lot lines. He asked if you have a garage now.

Mr. Ferington said he has a carport.

S. Ecker asked if the lot where you are placing the shed is there stone there now.

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Mr. Ferington said correct.

S. Ecker asked if the shed is movable.

Mr. Ferington said correct.

S. Ecker said you can legally put a shed up now with the lot being 100'x100' if you had a primary residence on it.

F. Leuer asked if there will be a driveway.

Mr. Ferington said he does not plan on a driveway. He plans on hiding it back there.

Chairman Linderman asked how he maintains the property now.

Mr. Ferington said it is all professionally maintained by a lawn smith.

Attorney Jones said the building is 10' x 18' and is movable. He asked what it takes to move it.

Mr. Ferington said a tractor or a car. He said it comes in one piece.

F. Leuer said they typically bring them in on a flat bed and winch them into place.

Mr. Ferington said it will sit on the gravel base on 5 – 4'x4' rails they call them.

F. Leuer that it will sit just on the gravel base.

Mr. Ferington said the gravel base should do it. He said it is a special washed base that won't absorb the moisture and protects the building.

Chairman Linderman asked if the building will have any other use.

Mr. Ferington said that is the primary reason. He said he does not have a lawnmower but perhaps lawn furniture.

S. Ecker asked if the need for the shed was no longer needed you could move it.

Mr. Ferington said if he put a home up he could move it. He said he did not want to be locked into one spot.

K. Wakefield asked what the height of the building is.

Mr. Ferington said he thinks 12 feet as it has an 8 foot roll up door.

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Attorney Jones said you are seeking a use variance under the zoning. He said the only thing that is permitted on this lot is a principal residence. He said you cannot have an accessory building without a principal building. He said a use variance is if there is a hardship with respect to the property. He said that hardship doesn't pertain to you as an individual but to the property itself. He said the hardship is an economic hardship which means there is no way that you can get a reasonable return on your investment in the property. He said they are very well maintained building lots and are readily saleable. He asked if he had anything to present to the Board that shows why you could not realize a reasonable return on your investment.

Mr. Ferington said he does not plan on selling anything and it (the property) is left to relatives.

Attorney Jones said that does not answer the question. He asked can you show that the property can't be sold or used for anything that is permitted within the zoning. He said you have two lots there that you can have two single family residences on.

Mr. Ferington said he made it into one lot.

Attorney Jones asked how it is an economic hardship. He said a unique hardship would be if you can demonstrate that as an example a raven went through the lot and there would be an economic hardship as you would not be able to sell the lot for building. He said you can sell the lot as a building lot. He said that is the criteria for a use variance. He asked if there is any place on your home that you can add an addition that would qualify for an area variance.

Mr. Ferington said he does not have the room.

Attorney Jones said an area variance is much easier to get as long as it does not disturb the neighborhood.

Mr. Ferington said it would cause a lot of changes. He said his lot looks larger than it really is. He said that he met with the Code Enforcement Officer twice during the summer to see what he needed to do to put a building up. Mr. Ferington said the Code Enforcement Officer said it has to be far enough away from the boundary line of which it is and it is movable. In July he asked him again for the criteria to put a movable building across the street and he was told that if it is movable and far enough away from the boundary line, you can do anything you want and that he never mentioned he needed a permit. Mr. Ferington said then after the base was put in, he received a call from the Code Enforcement Officer stating that he made a mistake and that he cannot put the building up without a house. He said he never mentioned anything about a building permit. Mr. Ferington said he made a point to talk to the Somerset Code expert twice. He said this is an expensive mistake.

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Chairman Linderman asked if he understood what Attorney Jones is saying about it being a hardship. He said because it is a legal residential lot it can be used as such and there has to be a hardship shown.

Mr. Ferington said I am presenting to you a health hardship.

Chairman Linderman said the hardship is with the land itself.

Mr. Ferington said I am not hurting anybody. He said Mr. Hogan is happy and everybody around is happy.

Attorney Jones said there have been three precedents where other people have asked to do this – two requests for garages and one for a pole barn. He said all three have been turned down.

Mr. Ferington said it is your decision and you can give me a variance due to my health concerns. He said he was misled by the code expert.

Attorney Jones said if you look at the code, a building is a structure and specifically lists a storage shed. He said there is nothing in there regarding movable or not. He said he cannot see how to differentiate between movable or not.

Chairman Linderman said movable is not a factor. He said a building is a building.

F. Leuer asked if a variance is granted can he deed the lot to someone else and can a condition be put on the variance like a special use permit.

Attorney Jones said not in his opinion.

Chairman Linderman said a variance goes with the property.

S. Ecker said you cannot put a condition on the property.

Attorney Jones said you cannot grant a condition to the owner. He said a special use permit goes with the land also.

J. Provencher said he thought special use permits are renewed yearly.

Attorney Jones said special use permits are reviewed yearly to see if there are any violations for possible revocation.

Daniel Hogan said then the rules need to be changed and you can recommend that.

Attorney Jones said the Town Board would do that.

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Mr. Ferington asked where the Code Enforcement Officer is tonight.

Chairman Linderman said he had training to go to and I told him he did not have to be here.

Mr. Ferington said he could have said that he made a major mistake.

Chairman Linderman said we are trying to find a way around this.

Bob Brown said he lives directly across the street and the lots are pristine lots and they take immaculate care of the lots.

Chairman Linderman said the lots are well taken care of.

Paul Higgins asked when the requirement went in.

Mr. Ferington said December 12, 2006 is when it went into effect after I purchased the lot. He asked if that has any bearing.

Attorney Jones said if there was a building there they could not make you take it down, but there was not building.

Mr. Ferington said everyone is different. He said I have properties that are immaculately kept and this should be site by site.

Elizabeth Higgins, 8735 Lakeview Drive, said the properties are improved down there and we are trying to improve the area with structures that are decent. She said we don't want every lot to fill up with houses. She said we are all in favor of this variance.

Paul Higgins said the tax base would improve with a structure on the lot.

J. Provencher asked if there is anything we can do.

Chairman Linderman said the ordinance, in my opinion was directed at pole barn structures where someone could come down to park a motorhome in the building and live in the motorhome in the summer. He doesn't feel it was directed at a small utility building.

Paul Higgins said people bought property across from them with the objective to put storage buildings on the south side because the lots are too small on the north side. He said everyone maintains their properties.

Elizabeth Higgins said she would rather have a lot that looks decent.

Chairman Linderman asked if they could put conditions on the variance.

Attorney Jones said it does not meet the criteria of a use variance. He said you have to meet all the criteria for a use variance and it is the law.

F. Leuer said we can recommend to the Town Board that the law be looked at.

Attorney Jones said you can ask the Town Board to take it up as an issue and explore it. He said it is a State Law that doesn't allow a variance from the use permit.

Mr. Ferington said he has already invested the money and was advised by the Somerset Code expert that I could do this and then he said he made a mistake. He asked who is going to pick up the tab for what I have laid out when he is turned down. He asked if the Town was going to reimburse him or do I have to – I don't want to say sue. He asked who is going to pay the bill.

Attorney Jones stated usually an opinion is not official until it is put in writing and when the permit is issued. He stated that you should be aware of the codes.

Elizabeth Higgins said the spirit of the law should be considered not just the letter of the law. She stated they support the people who vote. She said they take care of their property and they are not asking to put up a pole barn.

Paul Higgins said the Town gives the permit to build and you can restrict. He said you are penalizing everyone across the board after that date because they want to put up a building.

With all people desiring to be heard, Chairman Linderman closed the hearing at 8:32PM.

**HEARING -DALE M. HOWARD, 8663 Huntington Beach, Barker, New York  
SBL #2.14-1-91 – Variance for a Freestanding Storage Building**

Chairman Linderman opened the hearing at 8:33PM and asked Mr. Howard you want to do the same thing except bigger and better. He asked what your use is.

Dale Howard stated he has been working on this a long time. He said he has wanted to put up 4 different structures to be told he couldn't do it. He said he wants to put up a single family home there but they just got done doing their home for the past seven years. He said he would use the storage shed to store quality items that he purchases at a reduced cost until he is ready to build the house. He said he has gone to the design phase of the house and I don't know how long that will take. He said it depends on the economic climate. He said he is not going to put anything cheap in the house and as a smart consumer he looks for a good sale. He said the shed will be incorporated into the footprint. He stated he is a full time resident now.

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Chairman Linderman asked if the house will be constructed on the lot after the building is put up.

Mr. Howard said yes. He said I am doing it backwards. He said he is not going to spend money to store stuff at another site when I can put it in this place. He said the whole house that he lives in now has been done according to code. He said that is how I am going to do this house and that the properties are kept up. He said they are pristine. He said he wanted to merge the properties so he went to the Assessor. He said the Assessor said the County said you cannot cross the street. He said so now we are going to do the shed and I could put a cheap house on the lot but this is the area where you put quality homes. He said what we need to do down there is have one united voice for the whole area along the waterfront.

Chairman Linderman said so it is capacity for storage.

Mr. Howard said it is on the tax rolls as a vacant lot. He said when he talked to Dr. Ferington about his shed, he went to the same place to get a shed the same color but mine is bigger.

K. Wakefield said it is a 12 foot building and asked if he was going to house a car.

Mr. Howard said it is for storage and garden equipment. He said no car.

Chairman Linderman asked if there will be power to the shed.

Mr. Howard said no.

K. Wakefield said the building is built offsite and delivered.

Mr. Howard said yes.

Attorney Jones asked if he had a lot across the street.

Mr. Howard said kitty corner.

Attorney Jones said you have a 100 foot lot and you plan to build on it for a residential home. He asked what the economic hardship for the use variance is.

Mr. Howard said he is just pleading his case.

Chairman Linderman asked when he bought the lot.

Mr. Howard said he bought the lot in 2005.

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Chairman Linderman said that predated the ordinance.

F. Leuer asked if he always planned to build a house.

Mr. Howard said they wanted to get the land first then see what they wanted to do with it.

Mrs. Howard said we are permanent residents and it is our neighborhood.

Mr. Howard said they choose Somerset to move to because they love it.

Ron Estep asked if Somerset wants anything built at all. He said every time something comes up it is shot down.

Chairman Linderman said we don't make the law.

Mr. Howard asked if he could make it a farm.

Attorney Jones said it is not zoned for a farm. He said the only use permitted is a single family residence. He said if you have a single family dwelling then you can have an accessory use for storage structures. He said for accessory uses you have to have a principal residence first.

Dan Hogan said he is very happy to have these go through. He said the law has to be changed and you have the power to do that.

With all people desiring to be heard, Chairman Linderman closed the hearing at 8:47PM.

### **REGULAR MEETING**

Chairman Linderman opened the regular meeting at 8:48PM.

### **APPROVAL OF THE MINUTES**

On a motion of F. Leuer, seconded by S. Ecker, the following resolution was

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

Nays 0

Resolved the minutes of the December 20, 2012 meeting be approved as submitted.

### **COMMUNICATIONS**

Code Enforcement Officer's monthly reports for November and December 2012, and January through September 2013 were received and filed.

**NEGATIVE SEQR DECISION - Ferington**

On a motion of K. Wakefield, 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 the **JAMES E. FERINGTON, 8687 Lakeview Drive, Barker, New York SBL # 2.14-1-92** for a variance to place a movable storage building measuring 10 feet x 18 feet on a vacant lot located on the south side of Lakeview Drive across from 8687 Lakeview Drive, whereas Article X, Section 205-34 (B) of the Code of the Town of Somerset states before there can be any accessory building or accessory use in a Residential Lake Shore District (RLS), there must first be a principle use or principle dwelling on the lot, 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.

**NEGATIVE SEQR DECISION- Howard**

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

**DALE M. HOWARD, 8663 Huntington Beach, Barker, New York**

**SBL #2.14-1-91** for a variance to place a freestanding storage building measuring 12 feet x 24 feet on a vacant lot located on the south side of Lakeview Drive at the SE corner of Quaker Road, whereas Article X, Section 205-34 (B) of the Code of the Town of Somerset states before there can be any accessory building or accessory use in a Residential Lake Shore District (RLS), there must first be a principle use or principle dwelling on the lot, 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 – JAMES E. FERINGTON, 8687 Lakeview Drive, Barker, New York SBL # 2.14-1-92**

On the motion of S. Ecker, seconded by F Leuer, the following resolution was  
ADOPTED Ayes 4 Linderman, Ecker, Leuer, Provencher  
Nays 1 Wakefield

**RESOLVED** the application of **JAMES FERINGTON**, for variance request to place a movable storage building measuring 10 feet x 18 feet on a vacant lot located on the south side of Lakeview Drive across from 8687 Lakeview Drive Barker, New York 14012, is hereby **DENIED** as the reasons given are not adequate to grant a variance.

**DECISION - DALE M. HOWARD, 8663 Huntington Beach, Barker, New York  
SBL #2.14-1-91**

On the motion of S. Ecker, seconded by H. Linderman, the following resolution was

ADOPTED Ayes 4 Linderman, Ecker, Leuer, Provencher

Nays 1 Wakefield

**RESOLVED** the application of **DALE M. HOWARD** for a variance to place a freestanding storage building measuring 12 feet x 24 feet on a vacant lot located on the south side of Lakeview Drive at the SE corner of Quaker Road, Barker, New York 14012, is hereby **DENIED** as the reasons given are not adequate to grant a variance.

Mr. Ferington said the law needs to be changed and wants to know what the next step is to see the change.

Attorney Jones said the Town Board holds a public comment period and they would need to approach the Board to change the law.

There being no further business, S. Ecker moved to adjourn the meeting at 9:15PM, seconded by K. Wakefield. Carried unanimously.

Respectfully submitted,

Rebecca A. Connolly, MMC  
Town Clerk/Secretary