

**MINUTES OF A REGULAR MEETING  
OF THE ZONING BOARD OF APPEALS OF THE TOWN OF POMPEY**

**November 14, 2022**

**7:00 PM**

**Pompey Town Hall**

Board Members Present: David Tessier, Chairperson

David Hale  
Patrick Frazee  
Donald Neugebauer  
Sarah LoGiudice, Board Secretary

Board Members Absent: Kevin Sharpe

Four members of the Zoning Board of Appeals were present. Also present were Attorney Tim Frateschi, the Town of Pompey Codes Enforcement Officer Tim Bearup, and Town Supervisor Renee Rotondo.

Chairman Tessier confirms that there was a notice sent out regarding the Foote (Number 2 Road) Home Occupancy application. This matter will not be discussed further as there are some complications and issues with the way Home Occupations are worded in the Town Code; the Code is in the process of being amended. Supervisor Rotondo confirms that there will be a public hearing on the changes to the Town Code for home occupations at the Town Board meeting on December 5, 2022.

**Sarah Muller, 4421 Watervale Road; Tax Map ID: 003.-02-01.0**

Present is the applicant, Sarah Muller.

This application is for a variance to reduce the size of the lot from 1 acre to approximately 0.85 acres, and to reduce the lot depth from 200 ft. to approximately 170 ft. The application for a building permit has been denied by the Codes Enforcement Officer because the lot in question does not meet the existing Town Code as stated above.

Chairman Tessier confirms with the Board Secretary that the application submitted by Sarah Muller was complete. Fees have been paid, it was publicly advertised and all residents within 1000 ft. have been notified via certified mail. The application did not need to be sent to the Onondaga County Planning Board (OCPB) for review because it is an area variance not subject to GML 239.

**Application Review:** Chairman Tessier explains that the lot in question is zoned R-Residential. Codes Enforcement has interpreted that this lot is required to be 1 acre; as it stands the lot is .848 of an acre. A second part of the variance will include reducing the depth of the property from 200 ft. to 175 ft.

Board Member P. Frazee believes that the lot is considered a “grandfathered lot” and therefore would not require a variance. Chairman Tessier reports that he has not found anything in the Town Code about grandfathered lots, and therefore the correct way to go about the matter is with an area variance. Attorney Frateschi indicated that the Code Enforcement Officer must determine if the lot is conforming and/or grandfathered and in this case, he has determined it is not a conforming lot and therefore needs variances.

The State Environmental Quality Review Act (SEQR) form is on file. This project is a Type 2 Action, and therefore no further environment review is required. Board Member P. Frazee makes a motion to accept this application as a Type 2 Action at 7:12 pm; Board Member D. Hale seconds the motion. Chairman Tessier and Board Members P. Frazee, D. Hale and D. Neugebauer are all in favor; the motion passes 4 to 0.

The Board has received a copy of the survey map. There are no utilities on the lot, and the applicant’s intent is to tie into Onondaga County’s public water system; she confirms that the lot was advertised for sale with public water. The applicant will need to follow up with her builder on the specifics of tying into the County’s water. The applicant has had a Percolation test performed, and has already obtained both driveway and septic permits from the County. The Codes Enforcement Officer will need a copy of the Percolation Test, and confirmation of a water supply, before any building permit is issued.

**Public Hearing:** Board member P. Frazee makes a motion to open the public hearing at 7:16 pm; Board Member D. Neugebauer seconds this motion. All were in favor. The motion passes 4 to 0.

**Paul and Karen Billings, 4407 Watervale Road:**

-The Billings reside at the adjacent property to the immediate south of the lot. They have extensive knowledge of the property and have had multiple conversations with the previous owners about the lot not being a “buildable” lot; the Billings bought their lot specifically because of this. Mr. Billings is an architect, and does not believe that the Percolation Test that he witnessed occur was sufficient.

-Mr. Billings reports that Onondaga County has previously been contacted about extending the water district down Watervale Road. The County has said that the rule is “everyone or no one,” meaning that there would be no exception made for the applicant’s property. Everyone else on the road has a well, and the wells are already sometimes stressed. Mr. Billings is concerned about adding another dwelling. Although

the Billings can sympathize with the applicant, they are not in favor of any variance being issued.

Board Member P. Frazee comments that he believes it is critically important to figure out when the lot was created and why. The Board has allowed construction on lots less than one acre in the past and a precedence has been set. Mr. Billings believes that the lot was separated out from another parcel approximately four or five years ago.

There is a lot adjacent to the proposed property (part of the original lot was split) that is .81 acres. It is confirmed that this lot is in the Town of Manlius, not the Town of Pompey.

### **Kelly Roach, 4410 Watervale Road**

-Kelly Roach resides “kiddie corner” to the lot; she has lived there for 27 years. Ms. Roach knows the previous owners of the lot, and confirms that it has been known by many that the lot is not a buildable lot. Ms. Roach wonders how a real estate company was able to list the lot for sale in the first place.

-Ms. Roach notes that there is a rock cliff in the back of the lot, which will be behind the house. Unsure how a house will fit on the lot.

-There are concerns with the distance between neighboring septic systems, as she believes there is a minimum distance required. between septic systems.

### **Russel Haynes, 4390 Watervale Road**

-Mr. Haynes is an electrician. All of the houses on the road are attached to one “tub” located in front of Mr. Haynes home. Mr. Haynes is concerned that another dwelling will put strain on the transformer.

-Mr. Haynes feels that he is being laughed at. He says that he has come to the Board Meeting in order to ask questions and to get questions resolved. He has concerns about the project, and has come to voice his concerns. Board Member P. Frazee apologizes to Mr. Haynes, and Chairman Tessier confirms that the Board is here to listen to residents’ comments and concerns.

### **Sarah Muller, Applicant**

-Ms. Muller appreciates everyone’s concerns. She reiterates that the lot was sold to her as a residential building lot with public water access. Ms. Muller is happy to provide the results of the Percolation Test and will re-do it if that is necessary.

-The house is comparable in size on a comparably sized lot to others on the road. The house will go up to the Limestone shelf in the back of the lot, and there will be very little excavation necessary.

-Ms. Muller did have the property reviewed by both her builder and her attorney.

-According to the deed, the lot was created in 1977, and was part of the original lots 7 and 8.

Chairman Tessier stated that the survey shows one acre to the center line of Watervale Road. Historically this was accurate, but now lot coverage and depth of properties should be measured from the street line. This likely accounts for the difference in the size of the lot on the survey and the actual size of the lot.

### **Zach Smith, 4347 Watervale Road**

-Mr. Smith is concerned that if this variance is granted, the other remaining lots on the road will be granted variance's for the use of unbuildable lots in the future. Mr. Smith is getting tired of realtors claiming ignorance when it comes to the sale of the lots.

-Mr. Smith is skeptical that both a well and septic will fit on this lot; he is concerned about the longevity of the lot.

It is confirmed that you cannot subdivide between two towns. The Board has had this situation in the past. A lot was created in the Town of Pompey (adjacent to the Town of Cazenovia) that was less than 1 acre in order to rectify a previous situation. Board Member P. Frazee was opposed to this at the time that it happened.

Attorney T. Frateschi suspects that the previous owner subdivided the lot by deed and did not come to the Planning Board. This is a "non-conforming" lot and there is relief for non-conformance in the state law to allow Zoning Boards of Appeal to go through a test and make a determination as to whether or not the benefit to the applicant outweighs the detriment the community. This is the issue before the Board tonight. The Board will review the criteria and based on that review will make a determination as to whether the benefit of granting the variance to the applicant outweighs any detriment to the neighborhood.

Ms. Roach asks for the Board to confirm the definition of "sub-division." Attorney T. Frateschi explains that a sub-division is a parcel of land that has been divided into conforming lots for purposes of building a structure, usually a home. Chairman Tessier confirms that in his 35 years as a ZBA member, this property has not come before the Zoning Board of Appeals for a variance.

Mr. Haynes is concerned with the location of the proposed house, because he has seen several motor vehicle accidents near the location of where the house will be. He is also concerned with how the bedrock will be blasted; will there be a risk to everyone? Mr. Haynes wonders if County water will be available to all nearby residents.

Attorney T. Frateschi confirms that the Town of Pompey does not require public water for a buildable lot, so the issue of whether there is public water for this lot is not a consideration for this Board. There is also no provision in the Town Code re: the distance between septic systems and wells. The Zoning Board of Appeals is strictly looking at lot size and depth and whether or not it believes this lot would be sufficient to handle a single-family dwelling.

## **Jeff Hughes, 4334 Watervale Road**

-Mr. Hughes echoes what Mr. Smith is saying. He is concerned that builders would attempt to do the same thing to the lots next to him and he is concerned about the precedent. It appears that builders/sellers promise things that they really cannot promise.

Chairman Tessier stated that precedence is a concern to the Board, but just because something has been done in the past does not automatically mean that it will be done again. ZBA decisions are fact specific and made on a case-by-case basis.

Board Member P. Frazee asks that the lot and the surrounding properties be pulled up in satellite view for all to see. He points out that if you look at the concentration of housing, this house will not increase the density of housing. The character of the neighborhood is also not being altered at all by building one new single-family house.

The Zoning Board of Appeals confirms that if they give the variance that the applicant will still need to obtain all other approvals, and the Codes Enforcement officer will still need to issue a Building Permit.

Board Member D. Neugebauer motions to close the Public Hearing at 8:05 pm. Board Member D. Hale seconds the motion. Chairman Tessier and Board Members P. Frazee, D. Hale and D. Neugebauer are all in favor; the motion passes 4 to 0.

**Board Deliberation:** The Board deliberates the five considerations that are required under State Law that will help them answer the question about whether the benefit to the applicant in granting the two variances outweigh any determinant to the community/neighborhood:

**1. Whether the benefit sought by the applicant can be achieved by some other feasible method?**

The Board discussed this issue and D. Neugebauer stated that unlike a garage that can be moved if it doesn't meet setbacks, lot size is not easily remedied. The only way to increase the size would be purchasing more property from neighbors which seems unlikely in this case given the testimony of the neighbors. The Board agreed that in a situation like this, there is no reasonable solution other than for the variance to be granted.

**2. Whether the variance will result in an undesirable change in the character of the Neighborhood?**

Based on P. Frazee's review of the satellite picture brought up during this meeting, the Board agreed that one additional single-family house on a

parcel that is a little less than an acre would not be a detriment to the neighborhood.

**3. Whether the requested variance is substantial?**

The lot will be approximately 15% of an acre smaller than the required 1 acre. The variance is not substantial in terms of mathematics nor in the context of its affect to the neighborhood.

**4. Whether the variance will have an adverse effect on physical or environmental conditions?**

There is no adverse effect to physical nor environmental conditions. The only potential issue may be septic but this will be an issue that the County Health Department will address, if it hasn't already.

**5. Whether the alleged difficulty was self-created?**

Yes, the difficulty was self-created. This is answer in almost all variance applications. The applicant did not have to buy the lot, she chose to.

Board Member D. Neugebauer wonders if the Board can consider the issue of public vs. private water supply as a "condition" of approval. While it is possible that this could be added as a condition, he does not think it is necessary. If other residents on Watervale Road wish to pursue public water, they would need to petition the Town to extend that water district into the Town of Pompey.

Based on the review of the five criteria, the Board agreed that the benefit to the applicant in granting the variance outweighs the determinant, if any, to the community/neighborhood. Board Member P. Frazee moves to approve the variance application as stated. The variance application will be separated into two separate variances, per the request of Attorney T. Frateschi.

Board Member P. Frazee moves to grant the area variance for the .85-acre parcel of approximately .15 acres to make this a buildable lot. Board Member D. Neugebauer seconds the motion at 8:18 pm. Chairman D. Tessier and Board Members P. Frazee, D. Neugebauer and D. Hale are all in favor. The motion passes 4 to 0.

Board Member P. Frazee further moves to grant the area variance for lot depth of approximately 30 ft. on an existing lot depth of approximately 170 ft. per the survey provided by the applicant. Board Member D. Neugebauer seconds the motion at 8:19 pm. Chairman D. Tessier and Board Members P. Frazee, D. Neugebauer and D. Hale are all in favor. The motion passes 4 to 0.

David Hale made a motion to adjourn the meeting, seconded by Don Neugebauer at 8:20 PM. All in favor. The motion passes 4 to 0.

The meeting was adjourned.

Respectfully Submitted,

Sarah LoGiudice  
Secretary of the Zoning Board of Appeals