

## **Tivoli Village Zoning Board of Appeals**

### **Minutes of Monthly Zoning Board of Appeals Meeting June 11, 2007**

#### **CALL TO ORDER/ DETERMINATION OF QUORUM**

Meeting was opened at 7:00pm and a quorum determined present for the conduct of business. Due to the absence of Hildegard Edling, Karen Cleaveland presided over this meeting.

#### Zoning Board of Appeals Attendees:

Karen Cleaveland  
Mike Braun  
Mike Leedy  
Laura Gail Tyler  
Joe Cicileo (alternate)  
Donna Griffith (alternate)

#### Also Present:

Christine Chale  
Jim Simmons  
Lara Simmons  
Linda M. Murray  
Michael Nowicki  
Bettina Mueller  
Jonathan Trombly  
Robert Zises  
Kim Keil  
Herbert Mead  
Phyllis Palmer  
Mary Chang

#### Absent:

Hildegard Edling

#### **BUSINESS SESSION**

1. Karen Cleaveland stated that due to the absence of Hildegard Edling, Donna Griffith will be a voting Board member at this meeting.
2. Karen Cleaveland read the Public Hearing Notice aloud and collected the required certified mail receipts from Jim Simmons.

3. James Simmons, 18 North Road –Rear. Application for an Area Variance. Presented by James and Lara Simmons, and their lawyer, Linda M. Murray.
  - a. Jim Simmons has submitted an application for an Area Variance to allow less than the minimum 50’ frontage for parcel access. Mr. Simmons has been denied a Building Permit for a 900 square foot house on his lot.
  - b. Linda M. Murray of Gellert & Klein, P.C.
    - i. Ms. Murray introduced herself and presented maps and plans regarding the application.
    - ii. Ms. Murray presented and reviewed letters and reports with details of the application and history of the parcel, and asked that these be made part of the record. These letters and reports were submitted at the May 2007 ZBA meeting.
      1. The documents and reports reviewed included:
        - a. A letter from Ms. Murray.
        - b. A map of the parcel.
        - c. A Title Report from River City Abstract.
        - d. 2 letters from Elizabeth Barrett Dachs of Euell Real Estate.
        - e. A Letter from Michael Nowicki of Ecological Solutions, LLC.
      - iii. Ms. Murray noted that the Simmons parcel has been in existence since at least 1894 and has been in the Simmons family for over 100 years and that it preexists any zoning.
        1. Ms. Murray said that this is not a self-created hardship due to the length of time the parcel has been in the Simmons family.
      - iv. Ms. Murray discussed De Pyster Street and noted that there is sufficient frontage with this paper street.
      - v. Ms. Murray also noted that the Simmons lot is surrounded by several non-conforming lots in terms of frontage, and added that according to Town Law there already exists sufficient frontage for emergency vehicle access.
      - vi. Ms. Murray discussed the Euell Real Estate letter and stated that the proposed house on this lot would conform to the character of the neighborhood.
      - vii. Ms. Murray discussed the issue of wetlands on the property and reviewed the letter by Michael Nowicki of Ecological Solutions, LLC.
      - viii. Ms. Murray stated that there is no viable alternative to this application and that a denial of the variance renders the property useless and land-locked.
      - ix. Ms. Murray stated that Mr. Simmons has a right to improve his property and that anything short of that is a de facto condemnation.

- x. Ms. Murray discussed the potential flooding impact on neighbors and stated that flooding already exists prior to any development on this property.
- c. Mike Braun asked Michael Nowicki about the difference between Federal and State wetlands.
  - i. Mr. Nowicki discussed both and stated that there are no mapped State wetlands on the parcel.
    - 1. Mr. Nowicki also discussed the necessity of notifying the Army Core of Engineers prior to putting any buildings or driveways on a Federal Wetland.
- d. Ms. Murray also discussed a theoretical right-of-way on Anita Micossi's deed at 22 North Road.
- e. Public comment:
  - i. Bettina Mueller, 14 North Road:
    - 1. Ms. Mueller re-submitted the report from Richard I. Cantor of Teahan & Constantino Counsellors at Law, originally submitted at the December 12, 2006 ZBA Meeting (see attached).
      - a. Ms. Mueller reviewed this report and argued that this is a type 1 action requiring a full Environmental Assessment Form (EAF), not a type 2 action as the Board has decide.
      - b. Ms. Mueller stated that the Rudikoff report states that there is a substantial wetland on this property.
      - c. Ms. Mueller also argued that this is not a self created hardship because although the parcel has been in the family for a long time, Jim Simmons just purchased the parcel a few years ago.
      - d. Ms. Mueller also noted that neighbors have requested to purchase the parcel from Jim Simmons.
  - ii. Jonathan Trombly, 11 Pine Street:
    - 1. Mr. Trombly asked for clarification on the "right to develop" and "the right to improve."
      - a. Mr. Nowicki and Christine Chale discussed these terms.
  - iii. The site plan was reviewed by members of the public.
  - iv. Linda M. Murray of Gellert & Klein, P.C.
    - 1. Ms. Murray responded to some of the comments made by the public.
      - a. Stated that the Board and Christine Chale also agree that this is a type 2 action and therefore does not require a full EAF.
      - b. Stated that Rudikoff did not do a site visit for the wetlands assessment, and that Mr. Nowicki was the only wetlands specialist who walked the property as part of his assessment.

- c. Responded to the Simmons right to improve, and responded to the statement that neighbors have offered to purchase the land.
- v. Robert Zises, 22 North Road:
  1. Mr. Zises stated that he had personally asked Jim Simmons 3 times if he was interested in selling the property, and for what price, and that Jim declined to answer.
  2. Mr. Zises discussed wetland issues and what would happen if the size of the proposed house was increased.
    - a. He stated that the Master Plan says neighboring homes should be similar in size to abutting properties.
- vi. Bettina Mueller, 14 North Road:
  1. Ms. Mueller further discussed type 1 vs. type 2 actions with the Board and Christine Chale.
- vii. Kim Keil, 16 Memorial Drive:
  1. Mr. Keil asked if only 1 house is allowed to be built on this parcel.
    - a. The Board responded that zoning stipulates 1 house per lot.
  2. Mr. Keil said he'd be interested in buying the parcel, and that he is not opposed to 1 house being built on it.
- viii. Herbert Mead, 7 Pine Street:
  1. Mr. Mead stated that he is not opposed to the variance.
- ix. Linda M. Murray of Gellert & Klein, P.C.
  1. Ms. Murray stated that any viable offer to purchase the parcel should be made in writing.
- x. Jonathan Trombly, 11 Pine Street:
  1. Mr. Trombly re-submitted a letter of opposition for this application, originally submitted at the December 12, 2006 ZBA Meeting (see attached).
  2. Mr. Trombly stated that there are non compliant surrounding lots, but that the existence of those should not grant this lot the ability to do the same.
  3. Stated that the idea of 50' of frontage being sufficient for emergency vehicles is hard to believe.
  4. State that drainage flows to the same pattern of the driveway.
  5. Stated that he disagrees with the biologist that development on this property would have no impact on flooding.
- xi. Phyllis Palmer, 24 North Road:
  1. Ms. Palmer asked if surrounding neighbors get a say over the effect on drainage, even if the variance is accepted.
    - a. Ms. Murray and Mr. Nowicki responded that the driveway has to be put in pursuant to Village

