

Torrey Zoning Board of Appeals
March 4, 2013

Public Hearing on applications of
03-13 Area Variance - Webster Martin 1840 Ridge Rd (Porch)
05-13 Area Variance – Webster Martin 1485 Quenan Rd (Mobile home)
08-13 Special Use – Samuel Zimmerman 2390 Hazard Rd (Modification)

Present: Chairman Tony Cannizzaro, JM Cougevan, Marty Gibson, Pat Hoke
Chris Hansen - Excused

Others: Floyd Hoover, Webster Martin, Samuel Zimmerman, Dave Granzin, Sam Selwood,
Dwight James- Code Officer, Johannes Reinhardt

Chairman Cannizzaro opened the public hearing at 7:05 PM and read the order in which the hearing was going to proceed.

Chairman interrupted the order of the public hearing to have the board members discuss a question on an existing Special Use Permit of Johannes Reinhardt.

Mr. Rinehardt has a Special Use Permit to construct and operate a small farm winery on his property at corner North of Route 14 and Larzalere Rd, (no address number has been assigned due to under construction) .

He would like to relocate the small tasting room building to an area closer to the proposed future winery site.

Code Officer James stated he has reviewed the new site plan and all the setback requirements are met and there is an erosion control plan in place. The new location will work better for the wastewater/septic system design layout. The board members accepted the Code Officers determination and deemed no further review is required.

Application 03-13 of Webster Martin 1840 Ridge Rd for an Area Variance to construct a porch on the front of his house which will not meet setbacks. He is requesting a 17' variance.

Mr. Martin presented certified and/or receipts of notice for the following property owners directly affected by proposed application.

Mel & Mary Martin 1154 Hopeton Rd Penn Yan, NY 14527
Jim & Ruth Covell 1886 Ridge Road Penn Yan, NY 14527
Jeffrey & Angela Wisniewski 1904 Ridge Rd Penn Yan, NY 14527
Jan & Paul Martens 1724 Ridge Rd Penn Yan NY 14527
Floyd & Ada Mae Hoover 1793 Ridge Road Penn Yan, NY 14527
Glenn & Marlene Zimmerman 1905 Bentley Rd Penn Yan, NY 14527
Nelson & Marion Zimmerman 1979 Bentley Rd Penn Yan, NY 14527
Rodney & Nancy Jensen 1006 Rte 54 Penn Yan, NY 14527

Mr. Martin presented his case. He removed a porch during renovations to his home in 2000. He did not replace the porch. His wife would like to have a front porch to set on.

The secretary read the Yates County Planning board's letter dated.2/28/13.The YCPB recommends approval for the Area Variance for construction of a porch addition.

The Town of Torrey Planning Board letter dated 2/19/13 recommends approval of the Area Variance request for a porch.

Samuel Zimmerman 2390 Hazard Rd. spoke in support of this application.
Floyd Hoover 1793 Ridge Rd spoke in support of this application.

No one spoke in opposition.

There being no further questions, Chairman closed the hearing on this application, 03-13 at 7:11PM

Application 05-13 of Webster Martin property at 1785 Quenan Rd for an Area Variance to install a single wide mobile home on his property .

Mr. Martin presented certified and/or receipts of notice for the following property owners directly affected by proposed application.

Jan & Paul Martens 1724 Ridge Rd Penn Yan NY 14527
Whitaker Trust Apt 3006 10450 Lottsford Rd Bowie Maryland 20721-2734
Guy Christiansen 1466 Quenan Rd Penn Yan, NY 14527
Eva Jensen 1725 Townline Rd Penn Yan, NY 14527
Harvey & Lucinda Martin 1518 Rte 54 Penn Yan, NY 14527
Jeffrey & John Kidd 1538 Rte 54 Penn Yan, NY 14527
Dave & Carol Bogue 1570 Rte 54 Penn Yan, NY 14527

Mr. Martin stated his case. He would like to install a 14'x72' single wide mobile home on his farm at 1485 Quenan Rd. It is a financial hardship for his son to build a permanent home at this time, but he feels in 5-10 years his son will be able to build..
He has a barn built for cows on the property. This will be a start-up dairy farm for his son. He plans to have cows in the barn after harvest this year.
Mr Martin explained how start up farms work. The fathers hold the mortgage the farms he buys for his sons. At a later time when the start- up farm is producing the sons eventually take over the finances. Until then the sons rent the farms or have an agreement.

The secretary read letters from the Yates County Planning Board dated 2/28/13, this letter recommended approving this application for relief of the one year limitation and request the town to set a time limit.

Town of Torrey Planning Board dated 2/19/13, the board recommended approval with the condition: The variance is valid for a period of five (5) years from date of approval.

Dave Granzin 1839 Perry Point Rd, Chairman of the Planning Board, inquired if the letter from the Town Attorney was going to be read.
Chairman read email from Kathleen Bennett

Prior to granting an area variance, the ZBA must balance the benefit to the applicant versus the detriment to the health, safety and welfare of the community using the following five factors:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance;*
- 2) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance;*
- 3) Whether the requested variance is substantial;*

- 4) *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and*
- 5) *Whether the alleged difficulty was self-created.*

No one factor is determinative. In fact, even if a majority of factors weigh in favor of the applicant, the ZBA has the discretion to deny the variance if it finds that the detriment to the community outweighs the benefit to the applicant. Moreover, although it is not listed as one of factors that the ZBA must consider, the ZBA is entitled to consider the precedential effect of its decision and the impact of its decision on the effectiveness of the zoning code. Here, unless the ZBA finds special facts and circumstances that apply only to this property, granting an area variance to allow a single-wide trailer would create a precedent and make it extremely difficult to deny any similar requests for an area variance to allow single-wide trailers to be used as a single unit dwelling. Such a result would limit the effectiveness of the zoning code.

In considering whether to grant a variance, the ZBA is also permitted to impose any reasonable conditions or restrictions that are directly related to and incidental to the proposed use of the property and are aimed at minimizing the adverse impact on the neighborhood. Accordingly, a condition that establishes a time limitation on the variance would be permissible as long as the time limitation is related to the proposed use of the property (not tied to ownership). In New York, variances conditioned to expire in three (3) years, in five (5) years, in ten (10) years, in fifteen (15) years and in twenty (20) years have all been upheld.

Given the precedential effect of granting a variance and its impact on the effectiveness of the zoning code, the ZBA must carefully consider whether the benefit to the applicant outweighs the detriment to the community and, if a variance is granted, the ZBA should consider imposing a time limitation of 1 to 3 years on the term of the variance. The owner would always be allowed to apply for an extension of time at which time the ZBA would free to extend or deny the variance.

Samuel Hoover- 2390 Hazard Rd spoke in support of this application.
Floyd Hoover 1793 Ridge Rd spoke in support of this application

Discussion by board and Mr. Martin on other ways to achieve housing, such as double wide or a smaller home. The members apologized for the misinformation supplied by the former code officer, thus causing a financial hardship with the purchase of the mobile home. Mr. Martin stated he has had offers for it already and will not have a problem of reselling it. He needs to know what he can do, his son is not married yet, so not an urgency for the home.

Pat explained the zoning law for manufactured homes and temporary homes. If the law is not followed closely any variance granted may set a precedent for future applications.

Jm stated the law pertaining to manufactured home has gray areas regarding this application and intent. He is not comfortable with an area variance as he feels this is not one.

There being no others to speak for or against this application 05-13 , Chairman closed this hearing at 7:55pm

Special Use Application 08-13 Samuel Zimmerman 2390 Hazard Rd, to modify the original SUP by removing existing structure 36' x 80' and building a larger 60 x 100' steel structure.

Art. 16 Torrey Zoning – Any modifications to a Special Use Permit requires a review to protect the adjacent properties.

Mr. Zimmerman presented certified and/or receipts of notice for the following property owners directly affected by proposed application.

Nathan & Mary Alice Burkholder 2382 Hazard Rd Penn Yan, NY 14527
Rufus & Katie Burkholder 2420 Hazard Rd Penn Yan, NY 14527527
Arthur & Arlene Zimmerman 2375 Hazard Rd Penn Yan, NY 14527

Mr. Zimmerman would like to build a larger structure to accommodate his growing woodworking business. Present structure 36' x 80' will be removed and replaced with an all steel structure 60' x 100'.

Clerk read the following:

Letter from the Yates County Planning Board dated 2/28/13 recommending approval of this application.

Letter from the Torrey Town Planning Board dated 2/19/13 recommending approval of this application.

Floyd Hoover 1793 Ridge Rd spoke in support of this application.

Webster Martin 1840 Ridge Rd spoke in support of this application.

No one spoke in opposition of this application.

Discussion on Mr. Zimmerman's business growth, which is a factor in the expansion.

There being no others to speak in support or opposition of this application Chairman closed the public hearing at 7:55 pm.

Chairman thanked all the attendees for their interest and explained the process from this point on.

Respectfully submitted,

Betty M. Daggett
Secretary 3/9/13