Romulus, New York ZBA
Minutes 5-27-2021
APPROVED

Meeting called to order at 7:02 by Mike Elliott

Roll Call: Present – Mike Elliott, Ken Battle, Neil Henninger and Tom Grasek (quorum)

Also in Attendance: None

Pledge of Allegiance

Public Hearing – Motion by Neil to open the Public Hearing for Appeal for the Busby appeal for 5674 East Lake Road. Motion seconded by Tom and unanimous approved. There was no discussion as no one from the public was in attendance. Motion by Neil to close the Public Hearing; it was seconded by Tom and unanimously approved.

Minutes of 04-22-2020 were previously approved remotely and posted on Town website. Copies were available for members.

Training Events – Tom completed his 2021 training. Ken previously completed his 2021 requirement. Neil and Mike need to take 4 hours minimum training for 2021.

Old Business:

- The Zoning Board of Approval requests that when the Zoning Officer rejects a Zoning Application, he state the reason and indicate what section of the Zoning Ordinance would be violated.

New Business:

- A Notice of Appeal / Application for Variance was received for the addition of a new structure at 5674 East Lake Road. This application was previously tabled at the previous ZBA meeting for action by the Seneca County Department of Planning and Community Development.
- The County department met on May 13, 2021 and provided their response in a letter to the Town Clerk, Jane Braunig, dated May 14, 2021. (Letter to be attached to these minutes.)
    - The County's analysis is primarily that a Use Variance is required to have a "second home on the parcel which sits astride County Rd 125 with the current residence on the lakeshore side." The Romulus Zoning defines "A parcel of occupied or designed to occupied by one (1) principal building…."
    - The County reviewed the four New York State mandated items an applicant must show all of the following:
        - Reasonable Return
        - Unique Circumstance

        - Essential Character of the Neighborhood
        - Self-Created Hardship
    - The applicant did not transmit any information with the application to demonstrate that these factors had been met.
    - The County also noted that the Zoning Officer rejected the application based on the proposed structure constructed of shipping containers is a mobile home. The Romulus Zoning only allows mobile homes in agricultural zones.
    - The County's recommendation is to deny the request for variance but referred the application to the Romulus ZBA for final resolution.
- Based on the above, the Romulus ZBA discussed the application and voted on each of the four requirements for a Use Variance:
    - Reasonable Return – Board voted unanimously this criterion was not met.
    - Unique Circumstance - Board voted unanimously this criterion was not met.
    - Essential Character of Neighborhood - Board voted unanimously this criterion was not met.
    - Self-created Hardship - Board voted unanimously this criterion was not met.
- Neil made a motion for the Board to deny the variance application. Tom seconded the motion and the Board voted unanimously to deny the variance.

Next scheduled meeting July 22 at 7:00 in the Romulus Municipal Building.

Meeting adjourned at 7:32 P.M. Motion by Neil, seconded by Tom and unanimously approved.

County Letter attached:

Busby - Letter, Report, Resolution.p

SENECA COUNTY

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

May 14, 2021

Ms. Jane Braunig
Town of Romulus
1435 Prospect Street
PO Box 177
Willard, NY 14588

via: romclerk@rochester.rr.com; town.clerk@romulustown.com

RE: **TR 1-1-04, Use Variance & SPR, Busby**

Dear Ms. Braunig:

The Seneca County Planning Board has completed its review of the above-mentioned report at the regular meeting held May 13, 2021. You will find enclosed the report and resolution. Our office should be advised of your final action within 30 days after the action.

If you have any questions regarding the report and resolution, please feel free to contact our office.

Sincerely,

Amanda Forney
Staff Resources Assistant
315-539-1730

Enclosure

E-copy with enclosure: Sue Ellen Balluff, Chairperson of the Town of Romulus Planning Board (sueellen.balluff@romulustown.com);
Michael Elliot, ZBA Chair (Michael.elliot@romulustown.com)

ONE DIPRONIO DRIVE
WATERLOO, NEW YORK 13165-1681
315 539 1730
FAX 315 539-1926

TR 1-1-04
Use Variance & SPR
Busby, Greg & Sandra
2 Pros Construction
Town of Romulus

TO: Seneca County Planning Board
FROM: Seneca Co. Dept. of Planning & Community Development
DATE: May 12, 2021

This request for a use variance and site plan review is located in the Town of Romulus and requires review under Section 239 of the General Municipal Law because it is within 500 feet of East Lake Rd (County Rd 125) and boundary with Town of Varick.

GENERAL INFORMATION

Applicant:	Busby, Greg & Sandra and 2 Pros Construction
(Address)	5674 East Lake Rd. Romulus, NY 14541
Status of Applicant:	Owners 2 Pros Construction - Agent
Requested Action:	Use variances and site plan review to construct a 2nd home on lot
Location:	5674 East Lake Rd.
Size:	107′ x 244′ (.6 Acres)
Surrounding Land Use:	
North:	Residential
South:	Residential
East:	Rural Vacant
West:	Lake
SEQR:	NO EAF submitted
Public Utilities and Services:	
Water	Seneca Lake Water Dist.
Sewer	Private
School District	Romulus
Fire Dept.	Varick volunteer

ANALYSIS

The applicants are requesting necessary action to allow the construction of a 40'L x 8'W x 20'H residence. This is to be second home on the parcel which sits astride County Rd 125 with the current residence on the lakeshore side.

The Romulus Zoning defines a lot as "A parcel of occupied or designed to be occupied by one (1) principal building and the accessory buildings or uses customarily incident to it, including such open spaces are required by this law, which is recorded by deed or survey in the office of the Seneca County Clerk." Therefore, for a second residential structure to be placed on this pre-existing, non-conforming lot, a use variance is needed.

As the use variance grants permission to the owner to do what the use regulations prohibit, this power of the board of appeals must be exercised very carefully least there be serious conflict with the overall zoning scheme for the community. The showing required for entitlement to a use variance is therefore intended to be a difficult one. The following are the requirements for the granting of a use variance by the Zoning Board of Appeals:

1) **Reasonable Return:** The statute[1] provides that the first test for the issuance of a use variance is that the applicant must demonstrate to the board of appeals that: "The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence." This is not that the property will generate a greater return if the variance is granted, but that if the property is used as required by the law is not a viable parcel. The court has stated: "A mere showing of present loss is not enough. In order to establish a lack of 'reasonable return', the applicant must demonstrate that the return from the property would not be reasonable for each and every permitted use under the zoning. Moreover, an applicant can sustain his burden of Proving lack of reasonable return, from permitted uses only by 'dollars and cents proof'. . ."

2) Unique circumstances: The second test that an applicant for a use variance must adhere to under the state statutes is that the property's plight is due to unique circumstances and not to general neighborhood conditions.
The statutes provide that an applicant must demonstrate to the board: "that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood."

3) **Essential character of the neighborhood:** The third test that must be met pursuant to state statutes before a use variance may properly be granted is that "the requested use variance, if granted, will not alter the essential character of the neighborhood." Because one of the basic purposes of zoning is to

adopt reasonable regulations in accordance with a comprehensive plan, it follows that changes which would disrupt or alter the character of a neighborhood, or a district, would be at odds with the very purpose of the zoning regulation itself.

4) Self-created hardship: It is well settled that a use variance cannot be granted where the "unnecessary hardship" complained of has been created by the applicant.

Nothing was transmitted with the application to demonstrate that these factors have all been met. Indeed it is hard to imagine that a lakeshore parcel could not get a reasonable return for its value or that the nature if this parcel is unique in this neighborhood. The essential character of the neighborhood could be greatly changed by establishing a precedent of two (2) residential structures per parcel. And as the owners have owned the property for over 4 years with no significant changes to the area, it is hard to imagine that this request is anything other than a want and that any alleged "hardship" is not self-created.

The Town of Romulus Code officer has ruled that the proposed structure to be constructed of shipping containers is a mobile home under the definitions in Article II of the Romulus Zoning. Article IV includes the statement that single wide mobile homes shall only be allowed in agricultural zones. This then means that the applicants need to either have the Zoning Board of Appeals overturn the code officer ruling (no applicant has been put forward for this action) or receive a second use variance to allow a single wide (8' wide) unit in the Lakeshore Residential Zone. This variance will also need to meet all of the requirements listed above.

Should this project receive both use variances, then the Planning Board will need to do a site plan review.

RECOMMENDATION

The Seneca County Department of Planning and Community Development advises the Seneca County Planning Board to recommend that this request for use variances be denied as there is no reasonable expectation that the statutory requirements can be meet for granting use variances. Should the applicant prevail at the Zoning Board of Appeals, then the granting of a site plan approval is left solely to local determination.

DOCUMENTS AVAILABLE

Zoning Permit Application
Variance Application
Maps & Diagrams

Resolution 34-21

TR 1-1-04
Use Variance & SPR
Busby, Greg & Sandra
2 Pros Construction
Town of Romulus

WHEREAS, the request of Busby aided by 2 Pro Construction for 2 use variances and site plan review was forwarded for review under Section 239 of the General Municipal Law because it is within 500 feet of County Road 125 and boundary with Town of Varick, and

WHEREAS, the Seneca County Department of Planning and Community Development did review said request and prepared a report dated May 12, 2021, and

WHEREAS, the Seneca County Planning Board did meet on May 13, 2021, to consider this request, the report of the Seneca County Department of Planning and Community Development, and other pertinent information, be it therefore

RESOLVED, that the Seneca County Planning Board recommends that this request for variances be denied as there is no reasonable expectation that the statutory requirements can be met, and be it

FURTHER RESOLVED, that the granting of a site plan approval be left solely to local determination, and be it

FURTHER RESOLVED, that the Seneca County Department of Planning and Community Development be directed to forward word of this action to the Town of Romulus.

Motion Charles Brady

Second John Swanson

Ayes 10

Nays 0

Abstain 0

Amanda Forney, Secretary