

TOWN OF ERWIN

Zoning Board of Appeals

MINUTES 04/25/17 MEETING

PRESENT: Ralph Truitt, Jay McKendrick, Wesley Strzegowski, Ruth Fisher McCarthy, Bridget Ackerman, Mariana Huber

ABSENT: Frank Thiel

GUESTS: Dayue Jiang, John Dobson, Rick Rossettie, Tim Myers, Kristen Myers, Chris Todd, Rita McCarthy, Barb Lucas

CALL TO ORDER:

At 7:00 PM, Vice Chairman Jay McKendrick called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY, 14870.

MINUTES:

Minutes of the March 28, 2017 meeting were unanimously approved.

2017-02

REQUEST FROM COLOMBA P. SANTELL FOR AN AREA VARIANCE TO ALLOW A FRONT YARD SETBACK OF 22.93 FT WHERE 30 FT IS REQUIRED. VARIANCE OF §130-14 AND APPENDIX B DENSITY CONTROL SCHEDULE IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **31** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader, on April 16, 2017.

The application was the subject of a Planning Board action for a combination of two lots. The Planning Board made a negative declaration of environmental significance. **No further action is required.**

The property is located in an R-12.5 Residential Zone.

The applicant seeks to build a house 22.93 ft from the front property line. A front yard setback of 30 ft is required.

While the Town is aware that private deed restrictions exist in Aurene that would prevent the requested setback, the Town has no standing to enforce any private deed restrictions. The Town must consider this request only as it pertains to the Code of the Town of Erwin. Any aggrieved party with standing must address their grievance through the court system.

The applicant seeks relief of 7.07 feet

The application was presented by Rick Rossettie, attorney for Columba Santell. Chris Todd, architect for the applicant, and John Dobson, contractor, were also present. Attorney Rossettie noted two potential concerns related to variance of the front yard setback, site-line along the street and uniformity of

appearance from the street. Site-line considerations would be limited to two properties and the actual variance requested would result in no significant or perceptible changes in regards to the first two criteria to be considered by the Board, the character of the neighborhood and possible detriment to nearby properties.

Architect Chris Todd, noting the property was considerably narrower front-to-back than many other lots in the Aurene development, said it is not possible to construct the building as designed without a variance of the front yard setback. A slightly smaller variance could be achieved if the building was moved to the wider side of the lot however, that remedy was limited.

Attorney Rossettie noted that redesign of the building is not considered an option by the applicant. She had expressed to him that she would not purchase the property and build if a redesign was required. It was also noted that any potential building on the long vacant property would probably require a variance due to the shape of the property.

The Board agreed that the narrow dimension, front-to back, of the property is a valid consideration. Concern was expressed however, that granting a variance in this case may set a precedent for owners of other narrow properties.

Addressing whether the difficulty is self-created, Mr. Rossettie stated that the difficulty is self-created however, the Board must weigh the benefits to the applicant against any negative effects to the health, safety and welfare of the community. Negligible effects to the community as a result of granting the variance would be far outweighed by adding the value of a new house to the tax base.

VICE CHAIRMAN MCKENDRICK OPENS THE PUBLIC HEARING AT 7:23 PM.

Tim Myers, 3408 Conhocton Road, Painted Post:

Mr. Myers noted that the proposed structure would be a beautiful house however, it is too large for the lot. The development is a planned community and all regulations regarding setback are preexisting. He noted that the applicant does not own the property, currently has no financial investment and there are other lots available in the community which would not require a variance.

Dayue Jiang, 3394 Conhocton Road, Painted Post:

Mr. Jiang, owner of the property to the rear of the proposed building, is concerned that the proposed location of the structure is too close to his property. He also noted that he followed the preexisting rules regarding his own property and does not think that variances should be allowed.

The Zoning Board responded that in regards to the rear yard setback, the proposed location of the structure is compliant with the Town of Erwin's building code. If the proposed variance is compliant with the Town, yet non-compliant with the Aurene Resident's deed restriction, it will be necessary to contact the Aurene Resident's Advisory Board. Mr. Jiang was given the contact information.

Kristen Myers, 3408 Conhocton Road, Painted Post:

Ms. Myers questioned the size of the proposed structure and it was ascertained that the house would be approximate 3100 square feet, not including the garage. Ms. Myers was also concerned that she had not received a notice concerning a variance issued to another Aurene resident in the past.

The Town responded that formal notice of variance requests are limited to property owners within 500 feet of the variance location.

Tim Myers and Kristen Myers, 3408 Conhocton Road, Painted Post (Email attached)

Fred Sears, 3401 Conhocton Road, Painted Post. (Email attached)

VICE CHAIRMAN McKENDRICK CLOSES THE PUBLIC HEARING AT 7:55 PM.

THE ZONING BOARD OF APPEALS CONSIDERS AREA VARIANCE APPLICATION 2017-02 AND ANY PUBLIC COMMENT AND MAKES FINDINGS ON EACH OF THE AREA VARIANCE CRITERIA:

The requested variance will not produce an undesirable change in the character of the neighborhood.
<u> 4 </u> Board members say the requested variance will not produce an undesirable change. <i>The size of the house in proportion to lot size appears to be the main concern from the public.</i> <u> 1 </u> Board member says the requested variance will produce an undesirable change.
The requested variance will not create a detriment to nearby properties.
<u> 5 </u> Board members say the requested variance will not create a detriment. <i>Rear and side yard setbacks affect neighboring properties more than front yard setbacks.</i> <u> 0 </u> Board members say the requested variance will create a detriment.
There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.
<u> 1 </u> Board member says there is no other feasible method available. <u> 4 </u> Board members say there are other feasible methods available.
The requested area variance is not substantial.
<u> 2 </u> Board members say the requested variance is not substantial. <u> 3 </u> Board members say the requested variance is substantial.
The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
<u> 5 </u> Board members say the requested variance will not have an adverse effect or impact. <u> 0 </u> Board members say the requested variance will have an adverse effect or impact.
The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance.
<u> 0 </u> Board members say the alleged difficulty was not self-created. <u> 5 </u> Board members say the alleged difficulty was self-created.

RESOLUTION TO APPROVE REQUEST FROM COLOMBA P. SANTELL FOR AN AREA VARIANCE TO ALLOW A FRONT YARD SETBACK OF 22.93 FT WHERE 30 FT IS REQUIRED.

MOTION: RUTH FISHER McCARTHY
SECONDED: JAY McKENDRICK
DISPOSITION: 4-1 (HUBER)

THE MEETING WAS ADJOURNED AT 8:08 PM BY UNANIMOUS CONSENT.

EMAILS PRESENTED DURING PUBLIC HEARING

Barbara Lucas

From: Fred Sears <fmsears1@yahoo.com>
Sent: Saturday, April 22, 2017 3:28 PM
To: TownAssistant@stny.rr.com
Subject: Comments on Area Variance on Deer Crest Dr Lot 64 & 65

Dear Barbara,

I will be unable to attend the Zoning Board of Appeals meeting on April 25, 2017. Please find my comments below on the Area Variance request for Deer Crest Dr Lots 64 & 65. In my opinion:

- 1) Having a front yard setback of 23 ft where 30 ft is required will result in lowering of property values and change the character of the neighborhood, and
- 2) A change in the front yard setback of about 7 ft is substantial. Perhaps a much smaller change is possible.

Please let me know if you have any questions.

Best regards,
Fred Sears
3401 Conhocton Rd

March 28, 2017

Town of Erwin
Zoning Board of Appeals
310 Town Center Road
Painted Post, NY 14870

RE: Application #ZBA-2017-02

We request the planning board to deny the area variance and uphold the setbacks as set forth in Code of the Town of Erwin §130 Appendix B – Density Control Schedule B-2.

In support of this request to deny the variance:

1. The proposed area variance creates an undesirable change in the character of the neighborhood. The Aurene neighborhood is a planned community with a clearly defined and articulated vision. The character of the neighborhood detailed to the residents purchasing property in Aurene is conveyed in the document describing the community to prospective buyers. The relevant excerpt is quoted below:

*Aurene-a community inspired by nature (Commonly Asked Questions)
Dated Friday, October 13, 2000 11:31AM*

7. Q. How will the different types of homes be arranged?

A. Site conditions suggest a natural plan for the development. Smaller single family homes and townhouses will be places in the meadow overlooking the Cohocton River Valley. Most homes will be "clustered" into neighborhoods and surrounded by opens space. Large single family homes and lots will step up the wooded hillside, with the largest homes and lots placed on the hilltops and along the river.

The developer of the subdivision evaluated each lot for setbacks and calls out each lot individually to ensure there was sufficient area for the planned construction as described in Appendix I – Supplement to Declaration of Protective Covenants, Conditions, & Restrictions for Aurene, Phase III.

The applicant's request is a preference for a more lenient standard that was not applied to the community as a whole. The design footprint for the proposed structure is larger than possible for the unimproved lot – encroaching into the setback. A structure could be erected on the property and still meet the setback requirement. There are alternatives to the applicant that do not require a variance.

3. A variance is not an appropriate remedy for a condition that is shared by the neighborhood as a whole. The existing homes in the subdivision abide by the zoning regulations for front setback. (Appendix II) There are no extraordinary circumstances that apply to the property which do not apply generally to other properties in the vicinity.
4. The alleged difficulty is self-created out of a desire for a more lenient standard.

Finally, we believe that the proposed zoning area variance directly contradicts the comprehensive plan for the Aurene community. If allowed, this variance may set a precedent that adversely impacts Aurene and the town of Erwin.

Tim and Kristen Myers
3408 Conhocton RD
Painted Post, NY 14870

Appendix I

LIBER 1734 PAGE 34

20-50
5
TT (5)

Record and return to:

Upstate Partners, L.C.
Post Office Box 548
Corning, NY 14830

STEUBEN COUNTY
CLERK'S OFFICE

2001 AUG 28 P 4: 26

SUPPLEMENT TO DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS & RESTRICTIONS FOR AURENE, PHASE THREE

THIS SUPPLEMENTAL DECLARATION, is made and entered into on this 22nd day of August, 2001, by Upstate Partners, L.C., L.L.C., a Utah limited liability company, with a local office at Box 548, Corning, New York 14830, referred to below as "Declarant".

RECITALS

A. Declarant is the owner of certain real property located in the Town of Erwin, County of Steuben and State of New York, a portion of which real property is described on Exhibit "A" hereto (hereinafter, the "Phase Three Property"). Declarant plans to develop the Phase Three Property as the third phase ("Phase Three") of a residential community known as Aurene.

B. The first phase of Aurene ("Phase One") is shown on the official plat recorded in the office of the Office of the Steuben County Clerk on August 17, 1999 as Case Map #13656. Phase One is subject to the initial Declaration of Protective Covenants, Conditions and Restrictions (the "Declaration") which was recorded in the Office of the Steuben County Clerk on June 22, 1999 in Liber 1617 of Deeds, beginning at Page 92.

C. The Declaration was subsequently amended on December 7, 2000. A copy of such First Amendment was recorded in the Office of the Steuben County Clerk on December 19, 2000 in Liber 1695 of Deeds, beginning at Page 66.

D. The second phase of Aurene ("Phase Two") is shown on the official plat recorded in the office of the Office of the Steuben County Clerk on March 7, 2001 as Case Map #14549. Phase Two is subject to the initial Declaration, the First Amendment described above, and the "Supplement to Declaration of Protective Covenants, Conditions and Restrictions for Aurene, Phase Two" which was recorded in the Office of the Steuben County Clerk on February 5, 2001 in Liber 1702 of Deeds, beginning at Page 79.

E. The third phase of Aurene ("Phase Three") is part of the land described in Exhibit B-1 of the Declaration. The terms of the Declaration authorize Declarant to bring all or any portion of the land described in said Exhibit B-1 within the scope of the

Declaration by supplemental declaration recorded in the Office of the Steuben County Clerk at any time within twenty years following the recording of the Declaration.

F. For convenience, the initial Declaration for Phase One, and all amendments and supplements thereto of record, are referred to collectively hereinafter as the "Declaration".

DECLARATION

The Declaration, as amended, is herein incorporated by reference, and the full scope of the covenants, conditions, restrictions, and easements thereof is hereby extended to and shall be binding upon Phase Three. With respect to the specific lots within Phase Three, the following Exhibit "D" (in italics) shall supplement each Exhibit "D" that appears in the Declaration.

EXHIBIT "D"

SCHEDULE OF MAXIMUM FLOOR AREAS, MAXIMUM DISTURBANCE AREAS, MINIMUM SETBACKS, AND WOODED DESIGNATIONS FOR EACH LOT IN PHASE THREE

<u>Lot #</u>	<u>Lot Size</u>	<u>Maximum Floor Area</u>	<u>Maximum Dist. Area</u>	<u>Minimum Front SB</u>	<u>Minimum Side/Rear SB</u>	<u>Wooded Lot?</u>
301	0.30 ac.	3,200 SF	unlimited	30 feet	15/25 feet	no
302	0.32 ac.	3,000 SF	unlimited	30 feet	15/25 feet	no
303	0.37 ac.	3,000 SF	unlimited	30 feet	15/25 feet	no
304	0.32 ac.	3,000 SF	unlimited	30 feet	15/25 feet	no
305	0.29 ac.	3,000 SF	unlimited	30 feet	15/25 feet	no
306	0.32 ac.	3,000 SF	unlimited	30 feet	15/25 feet	no
307	0.43 ac.	3,200 SF	unlimited	30 feet	15/25 feet	no
308	0.33 ac.	3,200 SF	unlimited	30 feet	15/25 feet	no
309	0.30 AC.	3,200 SF	unlimited	30 feet	15/25 feet	no
310	0.31 AC.	3,200 SF	unlimited	30 feet	15/25 feet	no
311	0.31 ac.	3,200 SF	unlimited	30 feet	15/25 feet	no
312	0.33 ac.	3,200 SF	unlimited	30 feet	15/25 feet	no
313	0.48 ac.	3,400 SF	unlimited	35 feet	15/25 feet	no
314	0.34 ac.	3,400 SF	unlimited	35 feet	15/25 feet	no
315	0.33 ac.	3,400 SF	unlimited	30 feet	15/25 feet	no
316	0.36 ac.	3,400 SF	unlimited	35 feet	15/25 feet	no
317	0.35 ac.	3,400 SF	unlimited	35 feet	15/25 feet	no
318	0.39 ac.	3,400 SF	unlimited	35 feet	15/25 feet	no
319	0.38 ac.	3,400 SF	unlimited	30 feet	15/25 feet	no
320	0.39 ac.	3,400 SF	unlimited	30 feet	15/25 feet	no
321	0.49 ac.	3,200 SF	unlimited	35 feet	15/25 feet	no

Notes:

1. The column heading "SB" is an abbreviation for the term *Setback*. The column heading "Maximum

Dist. Area" is an abbreviation for Maximum Disturbance Area.

2. *For Lot #310, all vehicular access to the Dwelling on this Lot shall connect to Conhocton Road and may not connect or use Deer Crest for such purpose.*
3. *For Lot #311, all vehicular access to the Dwelling on this Lot shall connect to Conhocton Road and may not connect or use Deer Crest for such purpose.*
4. *In the event of a conflict between a Lot area or dimension described by this Declaration and a Lot area or dimension described by the Plat, the Plat shall govern.*
5. *When there is a difference between a setback distance required by this Declaration, and a setback distance required by the Town of Erwin, the larger setback distance shall govern.*

This Supplemental Declaration shall take effect as of the date that this instrument is recorded in the Office of the Steuben County Clerk.

UPSTATE PARTNERS L.C., L.L.C.

By: 
Its Manager

STATE OF NEW YORK)
 :SS
COUNTY OF STEUBEN)

On this 22 day of August, 2001, before me, the undersigned, a notary public in and for said state, personally appeared Gerald A. Jackson, Manager of Upstate Partners, L.C., LLC personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

RICHARD P. ROSSETTIE
NOTARY PUBLIC, STATE OF NEW YORK
STEUBEN COUNTY NO. 4794633
TERM EXPIRES MAY 31, 2003

Appendix II – Existing Structures Comply with Zoning Setback

