

# TOWN OF ERWIN

## Zoning Board of Appeals

### MINUTES 10/27/15 MEETING

**PRESENT:** Chairman Frank Thiel, Bridget Ackerman, Ruth Fisher McCarthy, Jay McKendrick, Angela Narasimhan, Kris West

**ABSENT:**

**GUESTS:** Kevin E. Rice, James Guinnip, Willis Earl, Rita McCarthy, Barbara Lucas

#### **CALL TO ORDER:**

At 7:00 PM, Chairman Thiel 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 5/26/15 meeting were approved by a vote of 5-0.

Minutes of the 7/28/15 meeting were approved by a vote of 3-0 as amended to reflect that Vice Chairman Ruth Fisher McCarthy opened the meeting.

Minutes of the 9/22/15 meeting were approved by a vote of 5-0.

## **2015-06**

**Request from Forest View Gang Mills Fire District for an Area Variance at 125 Forest Drive to allow a sign 8 ft by 11 ft, where 4 ft by 4 ft is allowed. Variance of §130-81.B.3.d, and Table 130-81-1 is requested. With Public Hearing**

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Notification of this action was sent to **58** adjacent property owners. A legal notice of this action will print in the Town's official newspaper, the Star Gazette on September 13, 2015, and in The Leader.

The sign variance is a Type II action under the State Environmental Quality Review Act. ***No SEQR action is required.***

The property is located in an R12.5 Residential Zone.

The applicant seeks to establish and LED sign which is 8 ft high and 11 ft wide. Per Table 130-81-1 Schedule of Signs, the maximum sign allowed in a residential district is 4 ft high by 4 ft wide.

Therefore, the applicant is seeking relief of an additional 4 ft in height and 7 ft in width.

The submittal does not indicate if the LED is a mobile message, nor its intensity. Section 130-81.B.11 states:

Illumination of signs shall not be intermittent/flashing or of varying intensity and may not

## 2015-06 (continued)

In 2005, when considering the Victory Highway Wesleyan Church sign, located in a Multi-Use District on State route 415, the Board allowed a 5' high by 12' wide where 8' high by 4' wide was allowed, and imposed the following conditions:

**Required conditions to mitigate the effect of the variance** -- There will be no flashing, blinking or scrolling (i.e. traveling or rolling) aspect to the sign. The message will change no more frequently than every 30 minutes. The sign will be no higher than 5 feet.

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The applicant has submitted a revised plan and seeks to establish and LED sign which is 6' 3.4" high and 5' 7.2" wide. Per Table 130-81-1 Schedule of Signs, the maximum sign allowed in a residential district is 4 ft high by 4 ft wide.

Therefore, the applicant is seeking relief of an additional 2' 3.4" in height and 1' 7.2' in

**No representative of the Forest View Gang Mills Fire District was in attendance. The application was withdrawn.**

## 2015-08

**Request from James Guinnip for an Area Variance at 256 Main Street to allow the lowest floor to be elevated 1.5 ft above the highest adjacent grade where 2 ft is required. Variance of §69-5.3-1.3 is requested. With Public Hearing**

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Notification of this action was sent to 43 adjacent property owners. A legal notice of this action will print in the Town's official newspaper, the Star Gazette on October 18, 2015, and in The Leader.

This is a Type II action under the State Environmental Quality Review Act. ***No SEQR action is required.***

The property is located in an R12.5 Residential Zone, and is designated as Special Flood Hazard Zone AO per the Flood Insurance Rate Map Index No. 360774 Panel 15 dated July 2, 1980.

The applicant seeks to construct a 792<sup>+</sup> sq. ft. addition to his existing 868 sq. ft house at the existing elevation, to provide disability access and a hospital bed for his spouse. The Code of the Town of Erwin Chapter 69 Flood Damage Prevention Section 5.3-1.3 requires within Zone AO that new construction and substantially improved structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet. The applicant seeks to construct the addition at 1.5 ft above base flood elevation.

Therefore the applicant is seeking .5 ft relief.

## CONDITIONS FOR VARIANCES

(2) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xii) in Section 6.1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(3) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:

(i) The proposed repair or rehabilitation will not preclude the structure's continued designation as a "Historic structure".

(ii) The variance is the minimum necessary to preserve the historic character and design of the structure.

(4) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

(i) The criteria of subparagraphs 1, 4, 5 and 6 of this Section are met.

(ii) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

(5) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(6) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(7) Variances shall only be issued upon receiving written justification of:

(i) A showing of good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(1) Upon consideration of the factors of Section 6.1(4) and the purposes of this local law, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.

(2) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

Chairman Thiel noted that application 2015-08 is not technically a zoning issue however the Zoning Board of Appeals is the adjudicating body.

James Guinnip, the applicant, presented the application. He stated that he wants to add two bedrooms and a handicap accessible bathroom to his home. His wife requires a wheelchair and the current bedroom is too small to allow access.

Mr. Guinnip has invested approximately \$2000 in blueprints, flood certification and flood insurance. He was denied a building permit because the floor height in the addition is required by code to be 6" above the floor height of the current structure. He considers ramps to be both inconvenient and a hazard. He would like to build the addition so that the floor height matches the floor height in the existing structure.

**Chairman Thiel opened the public hearing AT 7:12 PM.**

The following comments were received from the public:

**Willis Earl, son-in-law of the applicant** and residing at the house, noted that the house is situated far from the river and did not flood in 1972.

**Robert & Marlene Morse, PO Box 77, Coopers Plains, NY 14827:**  
"We have no problem with the proposed variance."

**Albert and Susan Eccleston, 251 Main Street, Coopers Plains, NY 14827:**

RE: 256 Main Street Coopers Plains NY 14827

Dear Board:

It is my and my wife's opinion that an addition to the above address in no way would be a distraction, blight or eyesore on our street. It would not block anything at all.

The property is always well maintained at all times and if Mr. Guinnip wants to make his disabled wife more comfortable in her home with this addition so that she may have an easier time, we think she should have that opportunity.

As for the question regarding being a self created difficulty / who can predict a devastating stroke? It is not in any way the "fault" of the people involved that Mrs. Guinnip is in a wheelchair and cannot climb stairs.

We think this project should be approved ASAP.

**Terry D and Joyce A. Hall, 255 Main Street, Coopers Plains, NY 14827:**

RE: 256 Main Street Coopers Plains NY 14827

It is our understanding that James Guinnip has plans to build an addition on his home to better accommodate his disabled wife. My wife is also restricted to her wheel chair a good percentage of the time in the house. We have built ramps in our home to accommodate for different floor elevations. These ramps take up a lot of space if built so that she is able to negotiate them, they cause tripping hazards to myself and guests in our home. Also depending on the location of the door opening, they may protrude into the center of the room which causes may other issues.

Building codes are a good thing, protecting occupants of the home and surrounding homes and neighborhoods. But there must be variances to accommodate physical handicaps of the occupants of a home. From our experience ramps inside the home, while a necessity when having different floor heights, can also be hazardous to others. So, if Mr. Guinnip is able to build an addition to accommodate for his wheel chair bound wife, a variance should be granted for the floor heights in the home to be constructed to meet the existing floor level.

We would ask that you grant Mr. Guinnip his request for the variance he needs to proceed with the construction of said addition.

**After taking comments from the floor and reading written comments into the record, Chairman Thiel closed the public hearing.**

Member Kris West asked whether Mr. Guinnip had considered alternate methods to meet code without a variance.

Mr. Guinnip noted that he had considered both relocating and jacking the existing home to the required elevation. Both options were too expensive.

Town Manager Rita McCarthy noted that the property is located in an A0 – Shallow Flooding Zone, the least hazardous zone.

**The application relates to Flood Damage Protection Law and requires consideration of a different set of criteria than zoning issues. The Board considered the opinion of a professional engineer necessary to properly evaluate the criteria. *Dave Iocco, P.E., representing the applicant, provided an engineering opinion on each criterion as noted below in italics.* The ZBA considered all technical evaluations, all relevant factors, standards specified in other sections of the Flood Damage Prevention Law and the public comment and agreed with the findings of Engineer Iocco on each of the criteria as outlined below:**

- (i) the danger that materials may be swept onto other lands to the injury of others;**  
*This would be a temporary concern. Once the job is complete, this is not a concern.*
- (ii) the danger to life and property due to flooding or erosion damage;**  
*This change in elevation of the finished floor of 6" would cause no greater danger than being at the required height. Only risk here is that of the applicant.*
- (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;**  
*The only risk here is to the applicant.*
- (iv) the importance of the services provided by the proposed facility to the community;**  
*Does not apply to this property in any way.*
- (v) the necessity to the facility of a waterfront location, where applicable;**  
*Does not apply to this property in any way.*

- (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;  
*Short of buying another home – no.*
- (vii) the compatibility of the proposed use with existing and anticipated development;  
*This is a residential use in a residential zoned area – complies 100%.*
- (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;  
*This complies 100% with the Town’s Master plan.*
- (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;  
*Variance would result in no change to the access of any vehicle.*
- (x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;  
*The variance would result in no additional costs to local governments, nor additional dangers.*
- (xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and  
*Per FEMA – the expected water height is 2 ft. during a 100 year storm.*
- (xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.  
*The variance – if granted – would have no negative effect on the listed issues.*

*Engineer locco:*

*As the requested variance is not to the size of the footprint of the addition, but rather to the height of the finished floor, I feel the only risk is to the applicant. As the applicant is obviously accepting of the risk – I don’t feel the requested variance is a threat to anyone else in the community.*

**MOTION TO GRANT VARIANCE 2015-08**

**MOVED BY: BRIDGET ACKERMAN**  
**SECONDED BY: RUTH FISHER McCARTHY**  
**DISPOSITION: 5-0**

**THE MEETING WAS ADJOURNED BY UNANIMOUS CONSENT AT 7:30 PM.**