

ZONING BOARD OF APPEALS MEETING

March 2, 2023

6:00 PM

The meeting was called to order by Chairperson Kathy Taylor at 6:00 PM. Roll call by Clerk, Cindy Schiminske, found the following Board Members present:

Kathy Taylor, Chairperson

Bob Faynor

Ernie Rivera

John Yurco

Absent: Craig Coleman

Also in attendance: Bill Gabak, Jr., Zoning Officer

Dominic Giacona, Attorney

Todd Post

Gary Polinsky

Todd Post submitted an application for a minor subdivision on property located at Buck Point, Tax Map #130.04-1-45. Attorney Dominic Giacona appeared on behalf of his clients, Todd Post, Linda Polinsky, John McHugh and Lisa Engert, who own the lot. The property owners would like to subdivide this 3.30 acre parcel into two (2) separate residential building lots.

Bob Faynor had some questions in regards to the SEQR that was submitted. He wanted to know why under 12b, which asks if the project site is located in or adjacent to an area designated as sensitive for archaeological sites on the NYS Historic Preservation Office Archaeological Site Inventory, it was checked "Yes". Mr. Giacona indicated that this was something that came up during the earlier stages of the clearing. Mr. Post stated that a study was undertaken by Binghamton University. He had a Phase I and Phase II archaeological study done. Mr. Faynor stated that if the form was checked "Yes" the Board would need documentation to prove that it's "Yes". Mr. Giacona stated that on the DEC website, which was where he got the SEQR, it populates some of those checks. Mr. Faynor indicated if, in fact, the box should have been checked "No", it's not an issue to revise that by changing it and initialing it.

He also questioned why under 13a of the SEQR which states "Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency", it was checked "Yes" but there's no explanation.

Also in reference to question 13b “Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?” That’s not checked. So, the SEQR form is not filled out properly. Mr. Giacona stated that that’s an optional box and they can certainly check that now because the subdivision does not infringe upon the wetlands. Mr. Faynor agreed with that. However, at the last meeting, when Mr. Giacona brought up the 62 day clock, that’s a start from when the proper forms are filled out and this form is incomplete, so the 62 day start is not here. The Board does not have an issue with revising this SEQR, but the 62 day clock is not in effect until tonight when this form is submitted correctly.

There was discussion about the need for road frontage in order to separate the lots. The lot is currently legal but in order to separate it, there must be 80ft of road frontage for each lot. They are looking for road frontage for Lot 2. Mr. Giacona stated that is not what the Fleming code requires. Mr. Faynor stated that road frontage means actual road frontage on that road. The Board can’t approve the subdivision because it would create a non-conforming lot. The Board indicated that they need road frontage for the secondary lot, which is the lot being separated off with no attachment to a road. How would they get to the lot? There was discussion about the easement owned by the Buck Point Association being used as a roadway. Mr. Giacona stated that every interior lot owner has the right to use this easement. Mr. Faynor stated that Mr. Giacona has to show the Board that there is legal access to the lot that is 80 feet. So, without that, he doesn’t feel that the Board can give him a subdivision.

Mr. Giacona stated that when he spoke with our counsel about this, he reviewed the project and indicated that there were no issues with it. Mr. Faynor reiterated that Mr. Giacona needs to show the Board where the proper road connection is to make it a single lot. Mr. Giacona stated that there is a difference between what he interprets, what the Town’s corporate counsel interprets and what the Board interprets. The Board may have operated under this principal for many years but he scoured the code and there is nothing in the code that says road frontage is actual.

Mr. Faynor repeated that he has no problem with the subdivision as long as they can show the Board that there is a proper entrance of 80 feet. The driveway off the cul-de-sac is fine for Lot No. 1. However, there is no frontage to create another lot. The Board will not create a non-conforming lot.

Mr. Giacona suggested we table this to the next meeting so that the Board can convene with their zoning attorney, as there is a difference in interpretive opinion with respect to what road frontage means.

There was discussion about who owns the property from the cul-de-sac to Todd Post’s property. Mr. Giacona stated he believes they would see a paper street there on the original subdivision map. If that was a paper street, then it would make that road frontage

as the Town has the road. He will research that and have the survey map revised to reflect the same if that is the case.

The changes were made to the SEQR. The Board will discuss this issue with Town counsel and will address this at the next meeting on March 16, 2023.

Chairperson Taylor made a motion to adjourn the meeting, seconded by Ernie Rivera. Time was 6:43pm.

Respectfully submitted,

Cindy Schiminske, ZBA Clerk