



**TOWN OF PEMBROKE
ZONING BOARD OF APPEALS
Minutes for the regular meeting held on December 18, 2013**

ATTENDANCE:

- Chairman- Nathan Witkowski
- Terrance Daniels – Vice Chairman
- David Sabato—Absent
- Richard Doktor
- Ronald Kasinski
- Diane Denton-ZBA Secretary

PUBLIC PRESENT: No

MEETING called to order at 7:34 pm.

A Motion to Approve the Minutes from November 20, 2013 was made by Richard Doktor; second to motion made by Ronald Kasinski.

Voice Vote—ALL AYES—**MOTION PASSED.**

DISCUSSION

Retaining Wall/Yancey's Fancy

Routes 5 and 77, Brick House Corners Drive, Town of Pembroke
(Tax Map # 19.-1-73.1; Zoning District: INT)

- The discussion is for the ZBA to decide whether or not a variance is needed for a retaining wall at the proposed Yancey's Fancy BETP facility.
- Proposed retaining wall would be 8'6" high (from ground level) with a fence or railing (height unspecified) on top, located on the West side of the facility, 60" from the lot line.
- EPA said a retaining wall is necessary.
- The question before the ZBA is whether the retaining wall would be a structure or just landscaping.
- If it is considered a structure, zoning in the Interchange district requires 30 ft. from lot line.
- The Town's engineer says that it is a structure; the Town's attorney says it is not.
- David Sabato was absent from the meeting, but let Chairman Witkowski know that he felt the retaining wall would make a nice distinction between the business park and adjoining properties.
- Terrance Daniels read from Zoning Code regarding what constitutes a structure: *anything that is constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on or in the ground.* He feels that because of the wall's height and need of a 'foundation', it is definitely a structure.
- The wall would be built out of blocks with a 1 ft. down minimum leveling pad made of crushed stone. It would run pretty much the whole length of the building, approximately 400 ft.
- Shellye Dale-Hall feels that because it is quite sizable in terms of height in order to hold land back, it is a structure, and that it is better to give a variance to make it right/legal for safety reasons. Although the

ZBA examines each application independent of previous determinations; from her standpoint, as the Zoning Coding Officer, not giving it a variance sets a precedence.

- If the board decides the retaining wall needs a variance, it must be referred to County before the ZBA can make a determination. If the board decides it doesn't need a variance, then nothing more needs to be done.
- The board members were asked whether or not they thought the retaining wall was a structure: Mr. Daniels, Mr. Kasinski and Chairman Witkowski thought it was; Mr. Sabato and Mr. Doktor thought it was not.
- The application will be referred to County for their January Planning Board meeting. The secretary will call Yancey's Fancy's attorney, Phillips Lytle, to let them know so they can fill in the appropriate paperwork and return to the Zoning Administration ASAP. It will require a Public Hearing at the next Town of Pembroke ZBA meeting, for which there will be a fee of \$50.00.

PUBLIC HEARING

Roger Durfee

2477 Main Rd., Town of Pembroke

(Tax Map # 17.-2-21.1; Zoning District: MDR)

Request for **SIDE LOT AREA VARIANCE**

Required Referral to Genesee County

PUBLIC HEARING called to order at 8:11pm. The Notice of Public Hearing ran in the Batavia Daily News December 12, 2013, was posted on the Town's Bulletin Board and letters were sent to adjoining property owners.

- Mr. Durfee was not present. He was sent a letter notifying him of the Public Hearing to be held regarding his request of a 3 ft. side lot area variance for the construction of a shed near the end of his driveway.
- Country approved the request, stating that *given there are examples of similar such setbacks in neighboring properties, the proposed shed location should not pose significant impacts.*
- The board decided to postpone the Public Hearing until their next meeting, as they have questions they would like to put to Mr. Durfee regarding his proposal. The secretary will send Mr. Durfee a letter letting him know of the postponement and requesting that he attend the January 15, 2014 ZBA meeting.

Old Business: The Town Board officially approved Zoning text changes and voted them into law. Town needs to put them into the Zoning Codes and Regulations book.

New Business: None

A **MOTION** to close the meeting was made by Chairman Witkowski, seconded by Richard Doktor.

Voice Vote—ALL AYES

MOTION PASSED

Meeting adjourned at 8:13pm.

Respectfully Submitted,

Diane Denton-ZBA Secretary

Nathan Witkowski-ZBA Chairman

These minutes were approved by the Zoning Board of Appeals 1/15/14 and are final.