



THE TOWN OF PEMBROKE ZONING BOARD OF APPEALS

1145 Main Rd., Pembroke, NY 14036

Minutes for the regular meeting held on January 16, 2019

ATTENDANCE:

- Terrance Daniel — Chairman
- Don Dylag — Vice Chairman
- Margaret Tuerk
- John Kadziolka
- Donald Showler
- Cherie Uebelhoer — Alternate
- Diane Denton, Recording Secretary
- Thomas Schneider, Zoning Enforcement Officer

PUBLIC PRESENT: Yes

MEETING called to order at 7:00pm.
Mr. Daniel led the “Pledge of Allegiance”.

Mr. Daniel introduced new board members: Margaret Tuerk, replacing Erika Gabbey, and Cherie Uebelhoer, who will serve as an alternate.

MOTION TO APPROVE the Minutes from November 21, 2018 made by Mr. Kadziolka;
Second to motion was made by Ms. Tuerk.

Voice Vote: ALL AYES—MOTION CARRIED.

Public Hearing **Front Yard Area Variance** **Richard and Sandra Markott**

North Angling Rd., Town of Pembroke
Tax Map# 24.-1-32.112
Zoning District: AG/RES

PUBLIC HEARING was opened at 7:05pm. The Notice of Public Hearing ran in the Batavia Daily News January 11, 2019, was posted on the Town’s Bulletin Board, and letters were sent to adjoining property owners within 500 feet.

- Two letters from neighbors were received, neither opposed to the Markott’s application, although one expressed concern about increased water flow under North Angling Rd. that might cause water backup on his lot. Mr. Schneider pointed out the location and direction of the water swale, a pond, and wetlands. He didn’t feel the Markotts proposed house, even at the regular setback, would have much, if any, impact on the water flow the neighbor was referring to.

- In Agricultural/Residential districting Town of Pembroke zoning, Schedule A, requires at least a 50 ft. front yard setback. Because the Topography of the site creates an approximately nine-foot fall from the road to where the home would need to be situated to comply, the Markotts are requesting moving the house forward to a more level spot, which would require a 24 ft. front yard setback variance.
- The Markotts didn't realize the problem with the lowness of the land until the vegetation on it was scraped away and the digging was done to get down to the pan.
- Looking at the map, Mr. Daniel said he saw a 4 ft. not 9ft. drop and enough flat land to have the house positioned at the proper setback.
- Nicholas Bellanti, representative for Owl Homes, explained the drop was laser-measured from the edge of the road to the very back of the site. A massive amount of water is sitting where the house was initially going to be situated in order to be in compliance. Mr. Bellanti said he would never put his name on a house going in a spot like that.
- The next-door neighbor's house to the north is in compliance with a 75 ft setback from the center of the road: 25 ft. (half the road) plus 50 ft. from edge of the road.
- If the house was positioned at the required setback, it would require a 7/8 ft. concrete wall at the back of its foundation for safety and longevity, which would add considerable and, for the Markotts, prohibitive cost to the project.
- Mr. Markott expressed that they only wanted a crawl space of 5 ft. under the manufactured house to go on the property. Placing it at the required setback would create basement height (having to meet basement codes) under the house at the back.
- Mr. Daniels noted that moving the house forward 24 ft. would only save 3 ft on the back wall.
- Zoning also requires that a house has to be level with the road. The Town Highway Superintendent said he would sign off on it as long as the Markotts provided a letter stating that they were aware that the property was below road grade and they would provide proper drainage.
- Mr. Schneider warned the Markotts that their request for a 24 ft. variance would be a tough sell to the ZBA.
- Mr. Markott said no matter how much fill was brought in, they would still have to dig down to clay base for footer, which would make the project expensive.
- Neighbor, who was present, talked about how wet the property could get, so it was in the Markott's best interest to bring in as much fill and have the house situated as high as possible.
- Mr. Showler suggested a compromise that would cut the variance requested to 12 ft.
- Mr. Daniel stated the choices he felt the Markotts had: 1) Let the board vote on 24 ft. variance. 2) Find a compromise between the required variance and the Markott's requested variance. 3) Leave the Public Hearing open until next month to rethink the application. 4) Request a lesser variance.
- The Markotts didn't want to delay the decision, because their home is ready to be delivered and they need a Certificate of Occupancy by March 1st to secure the loan for it.

Public Present: Yes – Applicants, representative from Owl Homes, and neighbors

Motion to Close the Public Hearing @ 7:41pm made by Mr. Dylag and seconded by Mr. Showler.

Voice Vote:

ALL (FOUR) AYES-MOTION CARRIED

Further discussion:

- Mr. Daniels noted the five factors that must figure into the ZBA’s consideration and determination: 1) If a 24 ft. front yard variance was granted, the next-door-neighbor’s view would be obstructed by the house; therefore, there would be an undesirable change to the neighborhood. 2) The benefit sought by the applicant could be achieved by another method: with additional cost the house could be positioned at the proper location. 3) The variance requested would be substantial, not just mathematically, but, for example, in this case, because none of the zoning districts in town allow less than 50 ft. for a front yard setback. 4) Under review: whether it would have an adverse impact on the physical or environmental conditions of the neighborhood or district. 5) Also under review: is it a self-created hardship?

On **MOTION** made by Mr. Daniel and seconded by Mr. Showler **to grant a 10 ft. Front Yard Variance on the basis the impacts will be minimized and taking into consideration that the applicants have strict financial limitations and didn’t realize the problem when they purchased the property.**

ROLL CALL VOTE: Ms. Tuerk-Aye; Mr. Kadziolka-Nay; Mr. Daniel-Aye; Mr. Dylag-Aye; Mr. Showler-Aye
Four (4) AYES; One (1) NAY—**MOTION CARRIED**

Old Business: None

New Business: None

A MOTION to adjourn the meeting was made by Mr. Kadziolka and seconded by Mr. Dylag.
Voice Vote:
ALL AYES—MOTION CARRIED.

Meeting Closed at 7:58pm.
Respectfully Submitted,
Diane Denton
Recording Secretary

Terrance Daniel, Chairman

These minutes were approved by the Town of Pembroke Zoning Board of Appeals April 17, 2019