

Town of Otsego Zoning Board of Appeals (ZBA)

Minutes – February 20, 2024

(Will be approved with any necessary amendments at the next meeting)

PUBLIC HEARING

23.15 – Peter Kapsales (Tim Yerdon) – Area variance, addition to residence within 500 feet of Otsego Lake in RA1 district – 6447 State Highway 80 (#84.00-1-17.02)

Chairman Crowell opened the Kapsales public hearing at 7:02 PM and noted that no one from the public was present.

Clerk Bill Deane noted that a hearing notice addressed to neighbor Judge & Vero Enterprise, Inc. was returned to sender as “not deliverable as addressed.”

With no further speakers or correspondence, Chairman Crowell closed the hearing.

REGULAR MEETING

The monthly Town of Otsego Zoning Board of Appeals (ZBA) meeting was held on this date at the Town Office Building in Fly Creek, N. Y. (the January 16 meeting was cancelled due to inclement weather). Chairman Greg Crowell called the meeting to order at 7:03 PM and led the Pledge of Allegiance.

Roll call was taken by clerk Bill Deane. Board members present were Crowell, John Dewey (vice-chairman), and Tony Scalici. With Sal Furnari and Corrine Armstrong absent, alternate members Mary Anne Whelan and Antoinette Kuzminski (newly-appointed) joined the meeting table. Town Zoning Enforcement Officer Wylie Phillips was also present. Deane distributed copies of the 2024 ZBA directory.

Chairman Crowell asked whether any Board members had an ethical or legal conflict with either of tonight’s applications. No one reported any conflict.

The Board reviewed the minutes of December 21, 2023, e-mailed to the members. Dewey moved to approve the minutes as written. Whelan seconded the motion and it was approved, 5-0.

Besides that addressed during the public hearing, there was no correspondence received since the last meeting. The Board moved on to the applications.

APPLICATIONS

23.15 – Peter Kapsales (Tim Yerdon) – Area variance, addition to residence within 500 feet of Otsego Lake in RA1 district – 6447 State Highway 80 (#84.00-1-17.02)

Representative Tim Yerdon was not present. The Board discussed the application, but agreed that they would not make a decision without the representative present, as they had questions for him. Clerk Bill Deane noted that the Board had 62 days from tonight’s hearing to make a decision, or by April 22.

Chairman Crowell said that the five criteria for granting a variance were not addressed in the application. He wants to know the locations of the well and septic system, and why the addition needs to be on the north side of the house.

Crowell noted that there are larger two-story houses in the area which are larger than or nearly as large as Kapsales's, which measures 2,540 square feet with a proposed addition of 980 square feet. According to County records, the house at 6429 State Highway 80 measures 3,700 square feet, at 6471 measures 3,390, and at 6483 measures 2,900+. He added that he did not think the requested variance was substantial, encroaching only five feet into the 30-foot setback requirement.

Antoinette Kuzminski wondered why the proposed addition couldn't be 11' x 26'4" rather than 16' x 26'4", in which case no variance would be needed. She noted that the "neighborhood" also includes the Lake, the health of which the Board should be protecting.

Mary Anne Whelan noted that no one voiced any concerns at the public hearing.

John Dewey said his only real concern was the septic system. Chairman Crowell said the Board could make their approval contingent on Watershed Supervisory Committee approval.

Tony Scalici said he thought the project would improve the property and environment, but that the applicant should submit written documentation answering all questions.

Chairman Crowell moved to table the application until March. Dewey seconded the motion and it was approved, 5-0. Zoning Enforcement Officer Phillips said he would contact Yerdon.

24.01 – Andrew Tillapaugh (Teresa Drerup, Martin Tillapaugh) – Area variances, addition to existing camp within 100' of Otsego Lake in RA1 district – 6688 State Highway 80 (#69.76-1-9.00)

Attorney Martin Tillapaugh represented his son, applicant Andrew Tillapaugh. Clerk Bill Deane read aloud from the January 2 Planning Board minutes relevant to the Tillapaugh application. This property had gotten ZBA variances and site plan approval back in 2010, when Joe Galati owned it, but he had never completed the project. The new owner now wants to follow through with it, staying within the previously-approved footprint and 40-foot height limit, but adding stairs and another floor. Zoning Enforcement Officer Phillips said he did not think this project required another variance, but the Planning Board voted to send it to the ZBA for review.

Martin Tillapaugh said that variances stay with the property and do not expire. He said that there had been a couple of intervening owners between Galati and his son, and that no new bedrooms are proposed (a kitchen and viewing area only). Tillapaugh distributed copies of a 1994 New York State Supreme Court decision in a case similar to this. A property owner had gotten a variance from the Town of Kent ZBA, allowing him to build on a .52-acre lot, though the local law called for a minimum of one acre. He had not followed through with it, and sold the property. In the meantime, the law was changed, requiring a minimum of two acres. Someone else bought the property in 1991 with plans to build on it. The Kent ZBA denied his request, saying the variance had lapsed, but the State Court had overturned their decision, saying the 1970 variance was never limited in duration or properly revoked.

Antoinette Kuzminski referred to *Land Use Law*, Section 1.05: "Reconstruction of non-conforming buildings... is not permitted following a lapse of the use for more than two years." Tillapaugh said this applies to use variances, not area variances.

Chairman Crowell moved that the 2010 variances are still valid, thus this application needs no further ZBA review or variance. Kuzminski seconded the motion and it was approved, 5-0. Crowell said no written resolution of this decision was necessary.

Tillapaugh asked to be put on the March 5 Planning Board agenda.

OTHER BUSINESS

Martin Tillapaugh shared his personal experience with the Watershed Supervisory Committee, and how it works with the local municipalities.

Zoning Enforcement Officer Phillips reported on a violation notice he had issued.

As shown on the ZBA directory, the Town Board reappointed Greg Crowell as chairman, Sal Furnari as member for 2024-28, and Antoinette Kuzminski to join as alternate member through 2026 (Dean Robinson's term expired, and John Tedesco resigned effective January 17). Clerk Bill Deane said that leaves the ZBA to appoint its 2024 vice-chairman. Chairman Crowell moved to reappoint John Dewey to the role. Antoinette Kuzminski seconded the motion and it was approved, 4-0, with Dewey abstaining.

With no further business, at 8:06 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Clerk