

MINUTES OF THE ZONING BOARD OF APPEALS THE TOWN OF KINGSBURY

Minutes of February 28, 2019

MEMBERS PRESENT:

Hank LaFountain, Chairman  
Brian Heasley  
Rich Hogan  
Bill Whipple  
Michelle Wood

MEMBERS ABSENT:

Katherine Henley (Excused)  
Sondra Michaud  
Scott Winchell (Excused)

CODE ENFORCEMENT OFFICER/ZONING ADMINISTRATOR:

Francis Cortese (Excused)

TOWN ATTORNEY:

Jeff Meyer, ESQ

The meeting was called to order by Chairman LaFountain at 7:00pm.

Roll call of all members.

Chairman LaFountain entertained a Motion to Approve the Minutes of September 27, 2018.

**ON A MOTION BY MR. WHIPPLE**, seconded by Mr. Heasley, the minutes of the September 27, 2018 meeting were approved.

AYES: 5

NAYES: 0

ABSTAIN: 0

MOTION CARRIED

**WWC, LLC**, Tax Map # 155.-1-13 commonly known as Newton Lane, Hudson Falls, Town of Kingsbury, located in Zoning District, IND-75, Industrial District is seeking Two Area Variances for a nonbuilding lot size (0.61 acres vs. 75,000 square feet and lot width/road frontage (93 ft. vs 200 ft.). Plans for proposal are available at Kingsbury Town Hall, 6 Michigan Street, Hudson Falls, New York during regular business hours.

Chairman LaFountain opened the Public Hearing.

<http://www.kingsburyny.gov>

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Chairman LaFountain introduced Attorney Michael O'Connor, Little, O'Connor & Borie, P. C. who will be representing WWC, LLC to address the Board.

Mr. O'Connor stated he has been representing the WWC, LLC, for a couple of years. In this time there has been a lot of negotiations between WWC, LLC, and Mary Webb who owned this parcel. At the end of 2018 Mary Webb stated that WWC, LLC, had to close on the property or she would be doing something else with it. At this point they closed on the property.

Basically, what they are looking for is an area variance not to change what is there now. There is a road they are hoping eventually will become a public road. This will be up to the EPA, the State of New York Canal Corporation and probably the Town of Kingsbury Town Board and the Town of Fort Edward Town Board.

They are asking for approval not as a building lot and would accept a condition that is not a building lot and will be used for road purposes. Ms. Webb owns property on both sides of this parcel. If the Board looks at the material that was sent to them, you can see on the tax map where Washington County has land hooked the properties. Ms. Webb has an easement reserved in the deed for a cattle tunnel that goes from one side of her property to the other side so that she can move here cattle to where she wants.

There is nothing new, there's not a change to the character of the neighborhood or detrimental change to the neighborhood. This is not any really substantial because it is pre-existing.

Mr. Hogan questioned if the tunnel is at this location now and will the tunnel be sufficient for a public road. Would the road be a county road or a town road?

Mr. O'Connor stated the tunnel is there. Mr. O'Connor believes the road would become a Town Road. The tunnel was there during the construction of the Dewatering Plant. All of the traffic from the dewatering plant went over the temporary road.

Chairman LaFountain questioned if this location was where Ms. Webb raises her cattle.

Mr. O'Connor responded that is what he is told. This eventually will help other people, where some people that are down the road towards the south will also be going this road will have access to their property which they do not have access at the present time. The parcels in this area are land locked.

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Mr. Heasley questioned if this proposal would be an extension to Newton Lane.

Mr. O'Connor stated eventually it will be. The State of New York Canal Corporation will not do anything with some of the road they have ownership to. When they did the road at the southernly end, they left out a triangle and is still owned by the State of New York. New York will have to clear up the title issues for this triangle piece of property. The State will not do anything until the EPA says that they will dedicate gateway Lock 8 to the Town. The EPA won't do anything until the Town says they will accept the dedication. This has been going on for a couple of years.

Discussion ensued among the Board with questions addressed by the Applicants Representative.

**ON A MOTION BY MR. HEASSLEY**, and seconded by Mr. Hogan the Kingsbury Zoning Board of Appeals declares lead agency status and having reviewed the short form SEQRA submission and having taken a hard look at the potential environmental impacts finds that there are no potential negative environmental impacts anticipated from this project and the Board issued a negative declaration on the project.

Chairman LaFountain closed the Public Hearing.

The Board then reviewed the proposed resolution.

**ZONING BOARD OF APPEALS OF THE TOWN OF KINGSBURY  
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution No. 1 of 2019  
Adopted February 28, 2019

Introduced by: Michelle Wood  
who moved its adoption

Seconded by: Brian Heasley

**RESOLUTION APPROVING  
AREA VARIANCE REQUEST OF  
WCC, LLC**

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**WHEREAS**, pursuant to the Chapter 280 of the Code of the Town of Kingsbury, the Town of Kingsbury Zoning Board of Appeals (hereafter the “ZBA”) is authorized and empowered issue variances in accordance with said Zoning Ordinance and Section 267-b of the Town Law;

**WHEREAS**, WCC, LLC (hereafter the “Applicant”), has requested an area variance for 48,428.4 square feet of relief from the 75,000 square foot minimum lot size requirement and an area variance for 107 feet of relief from the 200 foot lot width requirement on their property located at Newton Lane, identified as Tax Map Number 155.-1-13.2; and

**WHEREAS**, the Applicants requests variances from the lot size and lot width requirements found in Section 280-25 E of the Code of the Town of Kingsbury; and

**WHEREAS**, in accordance with the State Environmental Quality Review Act (hereafter “SEQRA”), the requested variances are unlisted actions, whereby a short environmental assessment form was previously reviewed and negative declaration was previously adopted; and

**WHEREAS**, a public hearing was duly held on the requested variances at which time the Applicant and members of the public were entitled to comment on the requested variances; and

**WHEREAS**, the ZBA has reviewed the Application and supporting materials, and has taken into consideration the comments from the public, and has reviewed the criteria found in Town Law Section 267-b.

**NOW THEREFORE BE IT RESOLVED:**

Section 1. Considering the area variance requirements , in considering the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, while noting that the ZBA must grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community, the ZBA hereby APPROVES the application and finds the following:

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(a) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance?

No, there are no undesirable changes that will result from the granting of the area variance.

(b) Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than through an area variance?

No, there are no feasible alternatives. The prior existence of the road and the existing limitations preclude other options.

(c) Is the requested area variance substantial?

Yes.

(d) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

No, the property is presently used as a highway and the proposed variances will not have any impact on the neighborhood.

(e) Was the alleged difficulty self-created?

Yes.

Section 2. The ZBA finds that the following conditions are directly related to and incidental to the proposed use of the property, and are consistent with the spirit and intent of section 280-17 of the Code of the Town of Kingsbury and NYS Town Law section 267-b, and are imposed for the purpose of mitigating against the potential adverse impacts on the neighborhood or community:

(a) The 0.61 acre parcel owned by WCC, LLC is shall not be a buildable lot, no structures shall be permitted to be constructed thereon.

(b) The remaining lands of Mary Webb approximately 0.9 acres in size contained on the lands to the north of the subject parcel is not a stand alone lot and shall remain merged with the remaining lands of Webb.

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Section 3. This resolution shall take effect immediately.

ROLL CALL VOTE

Henry LaFountain, Chair – Aye

William Whipple – Aye

Brian Heasley – Aye

Richard Hogan – Aye

Michelle Wood – Aye

**ON A MOTION BY MS. HENLEY**, seconded by Mr. Heasley all in favor, the meeting was adjourned at 7:30 P.M.

Michelle Radliff  
Secretary