

ZBA MEETING - JANUARY 28, 2016

(Time Noted - 7:38 PM)

RICHARD SOLOMONS/RANNE, L.L.C.

5351 & 5359 ROUTE 9W, NBGH
(9-3-22.2 & 23) B ZONE

Applicant is requesting an area variance for the front yard setback to construct a pet hotel and day care center for a site plan approval application before the planning board.

Mr. Manley: Our next application this evening before the Board is Richard Solomons/Ranne, LLC., 5351 & 5359 Route 9W, Newburgh requesting an area variance for the front yard setback to construct a pet hotel and a day care center for a site plan approval application before the planning board. Ms. Gennarelli...

Ms. Gennarelli: This applicant sent out twenty-three letters. All the mailings, publications and postings are in order.

Mr. Depuy: Tom Depuy, Depuy Engineering, I'm representing a...Mr. Solomons and Ranne, LLC. basically this is the Middlehope Veterinarian Hospital. They have an existing a...Pet Hotel and Day Care Center in this building here. We're in front of the planning board right now a...proposing a new building on this piece of property with a...a parking area here. What's happened is we need to consolidate these two lots together in order to have that...the proposal to work and when we do that it requires this existing building only has a thirty foot a...front yard a...at this point here. We're not expanding this building at all. All the new building is up here but when we do a...consolidate the two lots it makes it non-conforming. So basically it's a non...pre-existing, non-conforming setback. So basically we're in front of the Board asking to have variance. It would require sixty foot in today's standards when we're asking it...to get a variance of thirty six...it's twenty-four.

Mr. McKelvey: My question was going to be if you're going to combine the two lots but you've already stated it.

Mr. Depuy: Yeah, we're going to...they going to become one lot.

Mr. McKelvey: Because on your plans the edge of that building went over into the other lot.

Mr. Depuy: Right, right. Plus our...we have a proposed emergency access up on this side for fire and (inaudible) so it needs to be combined in order to make the overall site work.

Mr. McKelvey: And you'll have more parking on the...

Mr. Depuy: Yes, over on the side here. Yes.

Mr. Manley: That bridge that's currently there is going to be...

Mr. Depuy: The little footbridge?

Mr. Manley: Yeah, that's going to be changed.

Mr. Depuy: Yeah, that's going to be changed. We'll a...when they design the site but we...we're going to have some proposed a...retaining walls in here which will be outside the creek corridor but it will allow us to build a...a permanent bridge across there and it...that will be designed for...to let a hundred year flood pass through so a...yeah. Plus there's some existing buildings, old buildings on there that are coming down.

Mr. Manley: Do any of the Board Members have any questions or comments for the applicant?

Mr. McKelvey: I know the day that we were there you need more parking.

Mr. Depuy: Yes, yes that's the why we're proposing the parking lot over in this area.

Mr. Masten: That was...that was my concern too about those existing buildings that they're...they are coming down?

Mr. Depuy: Yeah, they're all coming down. Yes.

Mr. Masten: Yes.

Mr. Manley: We did receive notification from the Orange County Department of Planning with regard to this application and the comments from the County, had a couple of comments, I believe we've already sent the information over to the planning board. But they had indicated that the project was not referred to the Planning Department by the planning board which indeed it...it had been. I'm assuming it had been done so long ago that the Planning Department probably didn't recall it. But they indicated while we recognize that this is not the responsibility of the Zoning Board of Appeals we ask that the ZBA share this letter with the planning board so that our concerns may be addressed. We are primarily concerned at this time with the channelization of the on-site creek and the potential for groundwater pollution through the disposal of pet waste, the proposed handicap access for the new facility from the proposed parking area, the location of the proposed facility across property lines and the potential need for a SPDES Permit. So those were the comments from the Orange County Department of Planning and their recommendation to this Board is Local Determination.

Mr. Depuy: Okay.

Mr. Manley: If you'd like a copy of this I can give you my copy if you'd like.

Mr. Depuy: Okay, thank you.

Mr. McKelvey: Well they've already taken care of one; they are going to combine the two properties.

Mr. Manley: Correct. Do they Board Members have any other questions for the applicant before I open it up to the public?

No response.

Mr. Manley: At this point, if there is anybody from the public that's here for this application you can come forward, give your name and your address and your comments.

No response.

Mr. Manley: No comments, is there anything further from the Board before I ask for the Public Hearing to be closed?

Mr. McKelvey: All I can say is it's a well maintained property.

Mr. Maher: So again...again, in a nutshell, the only thing that you are looking for is a variance that's being created by a combination of lots?

Mr. Depuy: Yes, yes.

Mr. Manley: With that I'll ask for a motion to close the Public Hearing?

Mr. McKelvey: I'll make a motion to close the Public Hearing.

Mr. Manley: Do we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

(Time Noted - 7:44 PM)

ZBA MEETING – JANUARY 28, 2016 (Resumption for decision: 9:34 PM)

RICHARD SOLOMONS/RANNE, L.L.C. 5351 & 5359 ROUTE 9W, NBGH
(9-3-22.2 & 23) B ZONE

Applicant is requesting an area variance for the front yard setback to construct a pet hotel and day care center for a site plan approval application before the planning board.

Mr. Manley: The next application before the Board this evening is the application for Richard Solomons/Ranne, LLC., 5351 & 5359 Route 9W, Newburgh requesting an area variance for the front yard setback to construct a pet hotel and day care center for a site plan approval application before the planning board. This is a Type II Action under SEQR. Employing the same balancing tests for the area variance as we did for the other applications the first is whether the benefit can be achieved by other means feasible to the applicant.

Mr. McKelvey: I don't think so.

Mr. Manley: I mean unless they tear that one building...

Mr. McKelvey: Right.

Mr. Manley: ...that pre-existed...

Mr. McKelvey: Yeah.

Mr. Manley: ...there's no way to really achieve it any other way. Would the Board Members seem to agree with that or...?

Mr. McKelvey: Yeah.

Mr. Masten: Yes.

Mr. Scalzo: I agree.

Mr. Maher: Yes.

Mr. Manley: Will there be an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: I don't, I think it will be an improvement they're going to knock those...

Mr. Masten: Yeah.

Mr. McKelvey: ...other two buildings down...

Mr. Maher: Yeah those are...

Mr. McKelvey: ...those old...older buildings.

Mr. Maher: Yeah, they're...they're in tough shape to begin with so it will be an improvement for the area.

Mr. Manley: Is the request substantial in nature?

Mr. Maher: Not in my opinion, it's minimal.

Mr. McKelvey: No.

Mr. Masten: Yes.

Mr. Manley: Will the request have any adverse physical or environmental effects at all?

Mr. Masten: It shouldn't have, it shouldn't have I don't believe.

Mr. Scalzo: Well we should refer to the a...the County's letter regarding the channelization and the...I...I'm...I don't know that I can accurately determine whether there's going to be any environmental effects based on the letter from them.

Mr. Donovan: Let's just say that I think that was a concern that they wanted you to relay to the planning board because this is just on the front yard variance. So the issue would be with...with the issuance of the front yard variance have any adverse environmental impact?

Mr. Scalzo: Well then, no.

Mr. McKelvey: No it wouldn't.

Mr. Maher: Thanks for clarifying that Dave.

Mr. Manley: And finally whether the alleged difficulty is self-created?

Mr. Maher: Well the only way to get the building up is to combine the lots so in essence it is but it's a minimum variance request for a pre-existing building.

Mr. Manley: Based on the discussion do we have either a motion for approval or a motion for disapproval on the application before us?

Mr. Maher: I'll make a motion for approval.

Mr. Masten: I'll second it.

Mr. Manley: We have a motion and a second.

Ms. Gennarelli: Okay. Roll call.

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: And just for the record in case I didn't it's a Type II Action under SEQR.

PRESENT ARE:

MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

RICHARD LEVIN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE
JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:37 PM)



Steven M. Neuhaus
County Executive

Orange County Department of Planning

124 Main Street
Goshen, NY 10924-2124
Tel: (845) 615-3840
Fax: (845) 291-2533

David E. Church, AICP
Commissioner

www.orangecountygov.com/planning
planning@orangecountygov.com

County Reply – Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-l, m, &n

Local Referring Board: Town of Newburgh ZBA

Applicant: Richard Solomons/RANNE, Inc.

Project Name: Pet Hotel and Daycare Center

Proposed Action: Area Variance for front yard setback for new construction of pet boarding facility

Reason for County Review: Within 500 feet of US Route 9W

Date of Full Statement: December 21, 2015

Referral ID #: NBT 51-15M

Tax Map #: 9-3-22.2 and 23

Local File #: P1 Bd Refl

Comments:


The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the board finds that granting relief is warranted in this matter. We have no objection to the request for a front yard setback variance for the existing structure to remain onsite.

This project was not referred to the Planning Department by the Planning Board. While we recognize that this is not the responsibility of the Zoning Board of Appeals, we ask that the ZBA share this letter with the Planning Board, so that our concerns may be addressed. We are primarily concerned at this time with the channelization of the onsite creek, the potential for groundwater pollution through the disposal of pet waste, the proposed handicapped access for the new facility from the proposed parking area, the location of the proposed facility across property lines, and the potential need for a SPDES permit.

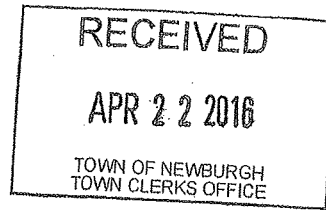
County Recommendation: Local Determination

Date: January 11, 2016

Prepared by: Megan Tennermann, AICP, Planner


David Church, AICP
Commissioner of Planning

As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. For such filing, please use the final action report form attached to this review or available online at www.orangecountygov.com/planning.



Section 9, Block 3, Lots 22.2 and 23

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

RICHARD SOLOMONS [RANNE, LLC]

DECISION

For an area variance as follows:

- *Grant of a variance allowing a front yard setback of 30 feet where 60 feet¹ is required.*

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Introduction

Richard Solomons [RANNE, LLC] seeks permission to redevelop an existing commercial site. Part of that redevelopment will include the consolidation of two lots, designated on the tax map as 9-3-22.2 and 9-3-23.

Tax lot 9-3-22.2 has an existing structure that is non-compliant with the minimum required front yard setback – 60 feet is required and only 30 feet is provided. The current condition is permitted as a pre-existing, nonconforming condition. However, as a result of the new approval being sought, the protection afforded to the pre-existing condition is lost. As a result, in order to accomplish the applicants' objective an area variance will be required. The nature of the area variance is as follows: (1) an area variance allowing a front yard setback of 30 feet where a minimum of 60 feet is required.

¹ See Town Code section 185-18(C)(4)(b).

The property is located at 5351 & 5359 Route 9W, is in the B Zoning District and is identified on the Town of Newburgh tax maps as Section 9, Block 3, Lots 22.2 and 23.

A public hearing was held on January 28, 2016, notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code.

Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

Section 185-18 of the said Code of Ordinances, entitled *Exceptions to district regulations*, further requires, at section 185-18(C)(4)(b), a minimum front yard setback of 60 feet as the front yard of tax parcel 9-3-22.2 abuts a State Highway, NYS Route 9W.

Background

After receiving all the materials presented by the applicants and hearing the testimony of Thomas Depuy, P.E., at the public hearing held before the Zoning Board of Appeals on January 28, 2016, the Board makes the following findings of fact:

1. The applicant is the owner of tax parcels 9-3-22.2 and 23 which is located at 5351 & 5359 Route 9W.
2. The lot is improved by a building which houses a pet hotel and dog day care center. The applicant now proposes to consolidate the two

lots and to redevelop the site by demolishing an existing building on tax parcel 9-3-23 and then construct a new building that will house a Pet Hotel and Day Care Facility.

3. The minimum required front yard setback for properties having frontage on NYS Route 9W is 60 feet.
4. The existing building on tax parcel 9-3-22.2 has a front yard setback of only 30 feet.
5. This condition is currently permitted as a pre-existing, nonconforming, condition. This protection, however, is lost because of the current approval sought thereby raising the need for the requested variance.
6. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Front Yard Setback	60	30	30	30	100%

7. No members of the public were heard during the hearing.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act inasmuch as it involves the granting of an individual setback variance [6 NYCRR §617.5(c)(12)]. As such, this project is not subject to review

under the State Environmental Quality Review Act.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

In reviewing the facts presented for the requested area variance, the Board considered the five standards for determining whether the applicants have sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variance.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the hearing that the proposed site re-development would be in harmony with this existing, mature, neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

The property is located in a B zoning district, which permits the use intended by the applicant. Thus, absent contrary data, the proposed site re-development, together with the continuation of the nonconforming front yard setback, would be consistent with the surrounding neighborhood.

No contrary evidence or testimony was submitted to Public Hearing.

Absent any testimony or evidence indicating such, the Board cannot conclude that any undesirable change in the character of the neighborhood or detri-

ment to the neighbors in that neighborhood will result from the construction of the proposed building.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that granting of the request of the area variance will not result in any serious, undesirable, detriment to surrounding property owners.

(2) Need for Variance

The applicant's request is generated by their desire to expand their business and the existing building. It is difficult for the Board to evaluate the applicants' *subjective* desire to construct the addition. However, the Board notes that the focus of our inquiry is on the character of the surrounding neighborhood. We have heretofore determined that the grant of the variance will not adversely impact the character of the neighborhood.

Accordingly, the Board finds that the benefit sought to be achieved by the applicants cannot be achieved by any other method other than the issuance of the requested variance.

(3) Substantial Nature of Variances Requested

The variance requested is substantial from a purely mathematical percentage basis. However, the Board finds that the *overall effect* of the variance – when viewed in the context of the totality of the circumstances – is minimal. Moreover, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the moderately substantial nature of the variance requested does not prohibit us from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony was given, nor was any evidence provided, that would indicate that issuance of the requested variance would result in any adverse physical and/or environmental effects. The applicants testified that no such effect would occur.

Based upon the evidence and testimony submitted, the Board finds that issuance of the requested variance will not adversely impact the physical and environmental conditions in this neighborhood.

(5) Self-Created Difficulty

The need for this variance is clearly self-created in the sense that the applicants purchased this property charged with the knowledge of the need to obtain a variance in order to redevelop the building of this size and location proposed.

However, the board believes, under the circumstances presented, that the self-created nature of the need for the variances requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of the variance.

Decision

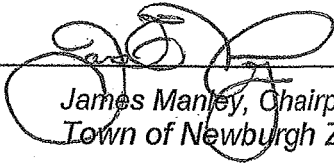
In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the area variance as requested conditioned specifically upon the following:

1. This approval is not issued in a vacuum but is rather one of two independent yet interconnected discretionary approvals (the other being within the jurisdiction of the Town of Newburgh Planning Board). As such, this grant of variance is conditioned upon approval of the application now pending before the planning board. This approval of the ZBA is intended to do no more than vary the specified strict limitation provisions of the Code identified; it is not intended to authorize construction of a particular building nor approve the footprint, size, volume or style thereof. The planning board remains possessed of all of its power and authority to review, limit, request modifications to, and to ultimately approve (absolutely or conditionally) any application in reference to this project as may come before it. Should the planning board require changes in the size, location or configuration from what is shown on the plans before the ZBA that require greater or different variances, the applicant must return to the ZBA for further review and approval.

2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variances shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period. . As noted above, this application is not decided in a vacuum but is rather tied to a specific application for approval pending before the Town of Newburgh Planning Board and this approval is conditioned upon the applicant diligently pursuing his application before that board. Provided that the applicant shall report to this board monthly on the progress of the application

pending before the planning board, and provided that such reports demonstrate a diligent pursuit of that application, the time period within which the planning board application is processed shall not be included within the initial six-month limitation of Section 185-55 D.

Dated: January 28, 2016



James Manley, Chairperson
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair James Manley
Member Michael Maher
Member John McKelvey
Member John Masten
Member Darrin Scalzo
ABSENT: Member Richard Levin
NAYES: None

