

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

(1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(4) that the alleged hardship has not been self-created.

(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Comments

1. The referring body should require the applicant to provide dollars and cents evidence of financial hardship as required by state and local laws.
2. The referring body should make the applicant aware of state and federal historic tax credits for income producing properties. <https://parks.ny.gov/documents/shpo/tax-credit-programs/NYSCommercialTaxCreditPrograms.pdf>

CPB Comments

1. If approving a use variance, the referring body should clearly define what is being allowed.

Findings

1. County Planning Board has an interest in ensuring local boards carefully consider the implications of granting use variances and adhere to the four prong unnecessary hardship test outlined in NYS statute.
2. County Planning Board has an interest in ensuring local boards grant the minimum use variance necessary to alleviate identified hardship.
3. Granting a use variance represents a permanent legal entitlement. County Planning Board encourages local bodies to consider alternatives that preserve, to the maximum extent, the municipality's ability to adjust allowable uses over time.

Board Motion: To retain referral 127-2022 as a class 2 and return it to the local board with comments and a recommendation of denial. **Motion made by:** Steve Groet **Seconded by:** AJ Magnan **Vote:** 13 in favor, 0 opposed, 0 abstentions **Motion carried.**

128 -2022

Town of Canandaigua Planning Board

Class: *Exempt*

Type: *Site Plan*

Related Referrals: 129-2022

Applicant & Property Owner: *Scott Hill*

Tax Map Parcel #: 126.12-2-4.00

Brief Description: *Site plan and area variance for 864 SF garage with 20' front setback when 60' is required on uphill side of 4220 CR 16 in the Town of Canandaigua.*

129 - 2022

Town of Canandaigua Zoning Board of Appeals

Class: AR 1

Type: Area Variance

Related Referrals: 128-2022

Applicant & Property Owner: Scott Hill

Tax Map Parcel #: 126.12-2-4.000

Brief Description: *Site plan and area variance for 864 SF garage with 20' front setback when 60' is required on uphill side of 4220 CR 16 in the Town of Canandaigua.*

<https://ontariocountyny.gov/DocumentCenter/View/35121/129-2022-aerial>

<https://ontariocountyny.gov/DocumentCenter/View/35137/128-2022-CR-16-4220-2022-06-17-1-page-Site-Plan>

A previous area variance was granted to allow 28' front setback when 60' is required. Variance limits width of garage to 40' and use of second story for storage only. The property has pre-existing non-conforming lot width of 100' when 125' required

No variance application provided, however, submitted site plan table indicates requested front setback is 20' when 60' is required. The project will disturb .17 of .63 acre site.

Proposed garage construction results in creation of slopes steeper than 3H:1V which will be stabilized with an erosion control blanket. Site plan shows drainage areas to north and south of driveway. No information is provided regarding existing soils and whether drainage areas will be constructed to allow infiltration.

Policy AR-5: Applications involving one single family residential site, including home occupations.

The intent of this policy is to:

5. Address residential development that may infringe on County ROW's or easements for roads and other infrastructure.
6. Address traffic safety along intermunicipal corridors by encouraging proper placement of residential driveways along County roads.
7. Address impacts to ground and surface waters
- C. Applications subject to policy AR-5 and not involving lakefront lots with coverage, or side or lakefront setback variances or with encroachments on County right-of-ways.

Final Classification: Class 1

Findings:

1. One-and two-family residential uses represent 63% of the 49,354 parcels on the 2017 Ontario County assessment roll. Between 2012 and 2017 1,067 single family residential parcels were added and 13 two-family were removed. These parcels represent 89% of all parcels added county-wide.
2. Collectively individual residential developments have significant impacts on surface and ground water.
3. Proper design of on-site sewage disposal is needed to protect ground and surface waters.
4. Proper storm water and erosion control is also needed to achieve that same end.
5. Proper sight distance at access points along County roads is an important public safety issue of county wide significance.
6. Standards related to protecting water quality and traffic safety have been established by agencies such as the American Association of State Highway and Transportation Officials (AASHTO), and NYSED.
7. These issues can be addressed by consulting appropriate agencies during local review and ensuring that those

standards are met

Final Recommendation – With the exception of applications involving lakefront properties or encroachments to County owned right-of-ways described in AR Policy 5 Parts A and B, the CPB will make no formal recommendation to deny or approve applications involving one single family residential site, including home occupations.

Comments

1. The Town is encouraged to grant only the minimum variance necessary to allow reasonable use of the lot.
2. The applicant and referring agency should Consult with the Ontario County Highway Department and ensure that the sight distances for the proposed driveway comply with standards established by the American Association of State Highway and Transportation Officials (AASHTO).
3. The applicant and referring agency are strongly encouraged to involve Canandaigua Lake Watershed Manager as early in the review process as possible to ensure proper design and implementation of storm water and erosion control measures.

130 - 2022

Town of Canandaigua Planning Board

Class: 1

Type: *Site Plan*

Applicant: *Marks Engineering*

Property Owner: *Payne Avenue LLC*

Representative: *Joseph Cereo*

Tax Map Parcel #: *98.08-1-10.100*

Brief Description: *Site plan for 1,600 SF concrete patio, detached walk-in cooler, and parking area modifications at Finger Lakes Public House, 405 Lakeshore Drive at the corner of SR 364, in the Town of Canandaigua.*

<https://ontariocountyny.gov/DocumentCenter/View/35122/130-2022-aerial>

<https://ontariocountyny.gov/DocumentCenter/View/35138/130-2022-1-page-site-plan-Lakeshore-Drive-405-2022-06-17-Revised-Site-Plan>

The 1.1 acre lot is occupied by the restaurant along the western property line and a gas station/convenience store at the corner of SR 364. The front portion of the lot is in the City of Canandaigua and the rear portion of the lot is in the Town of Canandaigua. Adjacent uses include Canandaigua Country Club to the west and a mobile home park to the south both of which are buffered from the restaurant by a fence.

The concrete patio, cooler, and expanded parking area were completed without site plan approval. Other modifications currently proposed include 6 concrete planters to create a barrier between the parking area and the concrete pad, replacement of 3 shade trees along the southern property line and relocation of the fence closer to the property line to accommodate such plantings; removal of storage trailer located south of the restaurant and replacement with lawn area.

Board Motion: To retain referrals 18-2022, 120-2022, 122-2022, 123-2022, 126-2022, 130-2022, 131-2022, 132-2022, 136-2022, 137-2022, 139-2022 and 141-2022.as class 1s and return them to the respective local boards.. **Motion made by:** AJ Magnan **Seconded by:** Steve High **Vote:** 13 in favor, 0 opposed, 0 abstentions **Motion carried**

131 - 2022

Town of Farmington Zoning Board of Appeals

Class: 1