

CANANDAIGUA TOWN CLERK  
*Quinn*  
MAY 16 2022

RECEIVED

# Town of Canandaigua

5440 Routes 5 & 20 West

Canandaigua, NY 14424

Phone: (585) 394-1120 / Fax: (585) 394-9476

CPN #: 22-042

## ZONING BOARD OF APPEALS APPLICATION

FOR: ☐ AREA VARIANCE ☐ USE VARIANCE ☒ INTERPRETATION

Permission for on-site inspection for those reviewing application: \_\_\_\_\_ Yes \_\_\_\_\_ No

1. Name and address of the property owner: Westbrooks

Telephone Number of property owner: \_\_\_\_\_

Fax # \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

\*\*If you provide your e-mail address, this will be the primary way we contact you\*\*

2. Name and Address of Applicant if not the property owner: Town Manager

Telephone Number of Applicant: \_\_\_\_\_

Fax # \_\_\_\_\_ E-Mail Address: d.finch@townofcanandaigua.org

\*\*If you provide your e-mail address, this will be the primary way we contact you\*\*

3. Subject Property Address: multiple

Nearest Road Intersection: see attached

Tax Map Number: \_\_\_\_\_ Zoning District: \_\_\_\_\_

4. Is the subject property within 500' of a State or County Road or Town Boundary? (If yes, the Town may be required to refer your application to the Ontario County Planning Board.)

Please circle one:

YES

NO

5. Is the subject property within 500' of an Agricultural District? (If yes, an Agricultural Data Statement must be completed and submitted with this application – for use variance applications only.)

Please circle one:

YES

NO

(Continued on back)

6. What is your proposed new project and the variance(s) or interpretation requested?

*see attached*

7. With your completed application for an Area Variance, attach a tape map/survey/site plan, elevation of the proposed structure, and other documentation necessary describing the requested variance(s) illustrating why it is practically difficult for you to conform to the Zoning Law.

All maps, surveys, or site plans shall accurately depict the property including all existing and proposed structures, setbacks, and dimensions. *All dimensions must be precise.*

8. With your completed application for a Use Variance, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you feel this use variance is necessary, and a completed Environmental Assessment Form.

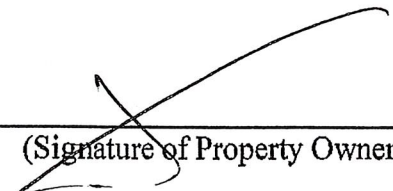
9. With your completed application for an Interpretation, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you are appealing the zoning law determination, and a copy of the zoning law determination of which said appeal is requested.

10. If the variance requested is related to signs, attach a Sign Detail Sheet, a site plan, and colored renderings of the proposed signage, and any other documentation required in Article IX (Sign Regulations) of the Town of Canandaigua Zoning Law.

***Property Owner is responsible for any consultant fees\****  
***(Town Engineer, Town Attorney, etc.) incurred during the application process.***  
***\*See Town Clerk for current Fee Schedule***

*I have examined this application and declare that it is true, correct, and complete. I understand that my application and all supporting documentation will be examined by the Zoning Board of Appeals as an integral component of deliberations.*

***I hereby grant my designee permission to represent me during the application process.***

  
(Signature of Property Owner)

\_\_\_\_\_  
(Date)

*3/14/22*  
*[Signature] Town Manager*

## INTERPRETATION NARATIVE

BE VERY SPECIFIC IN YOUR NARATIVE

"Interpretation" shall mean the authorization by the Zoning Board of Appeals to overturn the enforcement officer's determination for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

To enable the Zoning Board of Appeals to overturn the Zoning Officer's determination, the applicant must present substantial evidence why the determination should be overturned.

See  
Attached



## **Zoning Board Interpretation Request**

RE: Pertaining to the Town Code of the Town of Canandaigua  
As it pertains to: Cory Westbrook / Greg Westbrook  
4102 Onnalinda Drive (Tax Map #113.17-1-31.200)  
4118 Onnalinda Drive (Tax Map #113.17-1-31.110)  
4096 Onnalinda Drive (Tax Map #113.17-1-32.110)  
ZONING DISTRICTS: RLD- Residential Lake District  
SCR-1- Southern Corridor Residential

NYS, Town Law – TWN §267-b (1) “Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.”

As the Town Manager of the Town of Canandaigua, the Town Code of the Town of Canandaigua §69 and Town Board Resolution No.2022-014, the Town Manager is empowered to serve as the chief administrative officer and is further empowered relating to day to day operations including the oversight of personnel and administrative policies and regulations.

The Town Manager is requesting an interpretation of the Zoning Board of Appeals relating to the Zoning Officer’s determination of April 25, 2022.

### **DETERMINATION FINDINGS:**

The Zoning Officer’s Determination stated:

- Proposed Lots 1, 2, 3 and 4 are divided between the RLD and SCR-1 Zoning Districts.
- In reference to proposed Lot #1, lot frontage shall be construed to be the portion of the lot nearest the street. The proposed revisions to Lot 1 create a land locked parcel, which is not permitted. Section 174-19(d) of Town Code states no division of land shall result in any parcel becoming land locked. Applicant has submitted a waiver request asking the Planning Board to allow Proposed Lot 1 to have frontage along a private drive versus a public road.
- NYS Town Law enables the Planning Board to waive, if reasonable, any requirements for the approval, approval with modifications or disapproval of subdivisions. Waivers are subject to conditions and may be granted if such requirements or improvements are found NOT to be essential to public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision.
- Proposed Lot #2, fronting along Onnalinda Drive, does not meet sufficient lot dimensions for lot frontage in the RLD District (proposed width of 92.92 feet when 125 feet is

required).

- Proposed Lots #3 and #4 meet all minimum area and dimension requirements for zoning and building purposes for both the RLD and the SCR-1 zoning districts.
- The application was solely submitted by Cory Westbrook as it relates to 4102 Onnalinda Drive. (Tax Parcel #113.17-1-31.200) and 4118 Onnalinda Drive (Tax Parcel #113.17-1-31.110). There are three parcels under consideration, including 4096 Onnalinda Drive (Tax Parcel #113.17-1-32.110), owned by Gregory and Beth Westbrook. The application will need to be amended to reflect the additional property owners and new signatures are required.

### **INTERPRETATION REQUEST(s):**

#### **Point 1: Should the Zoning Officer's determination be overturned, and the application be considered incomplete?**

- Applicant (Mr. Cory Westbrook) made a planning board single-stage review subdivision application to the Town of Canandaigua, dated April 1, 2022. (CPN # 22-030). The application is signed by Mr. Cory Westbrook; however, the determination references parcels not owned by Mr. Cory Westbrook. Town Code §174-7 (D) requires all owners to sign applications for subdivision.
- §174-10 Single Stage Review, applications are required to be submitted in final form and include all information required in §174-13 and §174-14. In addition to an unsigned plat plan, items missing include various items in §174-13 and §174-14 including but not limited to the following: §174-13 C (1) (c), (d), (j), (3), (4), (6), and §174-14.

**NOTE:** While the Zoning Officer's determination stated the application should be amended, Town Code identifies the requirements for a complete application. As of the date of this request, the application has not been signed by all parties and therefore does not meet Town Code §174-7 (D).

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#### **Point 2: Should the Zoning Officer's determination be overturned?**

The Zoning Officer's determination stated, *"Proposed Lots 1, 2, 3 and 4 are divided between the RLD and SCR-1 Zoning Districts."*

The applicant's submitted plat plan dated 04/01/22 shows lots 2, 3, and 4 in both the RLD and SCR-1 Zoning Districts. Lot 1 (7.083 Acres) shows no portion as being located in the RLD.

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#### **Point 3: Should the Zoning Officer's determination be overturned?**

The Zoning Officer's determination stated, *"In reference to proposed Lot #1, lot frontage shall be construed to be the portion of the lot nearest the street. The proposed revisions to Lot 1 create a land locked parcel, which is not permitted. Section 174-19(d) of Town Code states no division of*



*land shall result in any parcel becoming land locked. Applicant has submitted a waiver request asking the Planning Board to allow Proposed Lot 1 to have frontage along a private drive versus a public road."*

- Zoning Officer states, *"Lot#1 lot frontage shall be construed to be the portion of the lot nearest the street."*
  - Subdivision plat dated 04/01/2022 identifies 125 feet of frontage along a private drive.
  - §174-19 (B) Lot sizes and dimensions shall not be less than those specific in Chapter 220, Zoning (unless part of §278 – Conservation Subdivision).
  - Lot 1 is solely within the SCR-1 and must have minimum lot size of 5 acres, with 250 feet minimum lot width for the keeping, breeding, and raising furbearing animals, swine and fowl §1-17 (Small Acreage Livestock Use). On-Cor and Google Maps imagery dated 05/16/2022 it is believed there are small livestock on the premise, of which the existing conditions in the application do not identify. Alternative the applicant should attest to the Small Acreage Livestock not being on the parcel, or removal.
  - Since Lot 1 has 125 feet of frontage on a private drive, does the private drive count toward the private right of way minimum frontage required?  
Town Code §1-17 defines:
    - Lot Width as, "The horizontal distance across the lot between side lot lines at the street line."
    - Street Line as, "The line separating a lot from a street."
    - Street as, "Except as provided in Chapter 138, Multichannel Service Providers, a strip of land, including the entire right-of-way, intended for use as a means of vehicular and pedestrian circulation. The term also includes highways and roads. Classes of streets are as follows:
      - A. COLLECTOR STREET ...
      - B. MAJOR TRAFFIC STREETS ...
      - C. MINOR STREET ...
      - D. MARGINAL ACCESS STREETS ...
      - E. PUBLIC STREET ...
      - F. RESIDENTIAL STREET ...
    - Public Way – "Any right-of-way open to the public for vehicular or pedestrian access."
- Zoning Officer states, *"proposed revisions to Lot 1 create a land locked parcel."*
  - Same as above, should the private drive (right of way) be considered for the purposes of minimum lot width?

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**Point 4: Should the Zoning Officer's determination that stated per NYS Town Law the Planning Board has the authority to waive subdivision requirements be overturned?**

Town of Canandaigua Code §174-1 grants legislative authority to: "The Planning Board of the Town of Canandaigua is hereby authorized to grant subdivision approval pursuant to New York

State Town Law §276, 277, and 278, and Chapters 115, 165, and 220 of the Canandaigua Town Code, as amended from time to time.”

§174-19 (B) “Lot sizes and dimensions shall not be less than those specified in Chapter 220, Zoning, of the Code of the Town of Canandaigua unless the provisions thereof are to be modified by the Planning Board pursuant to Town Law §278, as amended.” NYS Town Law §278 refers to cluster development and is defined as “a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.”

NYS Town Law §274-a (5) “Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.”

§174-7 (H) “Conservation subdivision. The Planning Board may consider any proposal for a conservation subdivision submitted by an applicant pursuant to § 174-16 of this chapter and New York State Town Law § 278, as amended. The Planning Board may require clustering of lots and development to protect environmentally sensitive areas or to preserve open space.”

Given Town of Canandaigua Code §174-1, §174-19, and §174-7 granting authority to the Planning Board to create subdivision provided they are not less than those identified in Chapter 220 unless pursuant to §278 cluster, conservation subdivision, and further since the proposed subdivision is not being proposed as a conservation or cluster subdivision, **should the Zoning Officer’s determination that states the Planning Board has the authority to waive Chapter 220 outside of a conservation subdivision be overturned?**

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**Point 5: Should the Zoning Officer’s determination be overturned as incomplete for not identifying the proposed Lot 1 as a flag lot pursuant to §174-19 (E)?**

Zoning Officer’s determination does not reference lot size arrangement for Lot 1. The parcel has 125 feet of frontage on a private drive and has over one thousand feet of depth creating a flag lot in violation of Town Code §174-19 (E).

§174-19 (E): Residential lots greater than three acres shall not have lot depths greater than 2 1/2 times the lot width except as may be specified in Chapter 220, Zoning, of the Town of Canandaigua Code.

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**Point 6: Should the Zoning Officer's determination be overturned as incomplete?**

Zoning Officer states, *"Proposed Lot #2, fronting along Onnalinda Drive, does not meet sufficient lot dimensions for lot frontage in the RLD District (proposed width of 92.92 feet when 125 feet is required)."*

- Proposed Lot 2 is not in conformance with §174-19 (E). Subdivision Plat shows 92.9 feet along Onnalinda Drive and 265 feet along a private drive as minimum lot width for a total of 357.9 feet vs. 1,215.32 feet depth (same lot depth as lots 3 and 4, plus depths as identified on plat). The maximum lot depth based on a lot width of 357.9 would be 894.75 feet resulting in the need for a variance of 320.57 feet pursuant to §174-19 (E).
  - Proposed Lot 2 does not identify the setback of the existing barn with the new proposed lot line between Lot 2 and Lot 3.
  - Proposed Lot 2 identifies a shared driveway between the one-story frame and the barn labeled as encroaching onto Lot 3 in violation of §220-9(V).
  - Proposed Lot 2 maybe in violation of §220-75; however, without identified distances between the property line and the driveway it is unknown.
  - Proposed Lot 2 appears to have two habitable structures on the same property the one-story frame building, and a barn converted to residential habitation.
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**Point 7: Should the Zoning Officer's determination be overturned as incomplete?**

Zoning Officer states, *"Proposed Lots #3 and #4 meet all minimum area and dimension requirements for zoning and building purposes for both the RLD and the SCR-1 zoning districts."*

- Proposed Lot 3 has two driveways on the same parcel in violation of §220-9 (V). Proposed Lot 3 may not be in conformance with §174-19 (E); however, the depth lot lines are not labeled and unable to be determined.
- Proposed Lot 4 is not in conformance with §174-19 (E). Subdivision Plat shows 125 feet of lot width and 320.57 feet of depth. Pursuant to §174-19(E) the maximum lot depth should be no more than 312.5 feet.