

**VILLAGE OF SCOTIA  
ZONING BOARD OF APPEALS  
MEETING MINUTES  
SEPTEMBER 26, 2016 - 7:00 P.M.**

**ATTENDANCE:** Terry Jackson, Tom Tiberio, Bonnie Belfance, Jeff Parry, Heather Gray, Ken George, Dinemayer Silva, Building Inspector Luis Aguero, Village Attorney Lydia Marola, and Catherine Busher.

Absent: Board Liaison Gregg Zeman

Voting members for tonight's meeting are Terry Jackson, Heather Gray, Tom Tiberio, Jeff Parry and Ken George

The Zoning Board introduced themselves.

**CASE #1: KIMBERLEY HEINTZ-BONGERMINO - 11 WALLACE STREET – SCOTIA, NEW YORK 12302**

Kimberley Heintz-Bongermino applicant of 11 Wallace Street, Scotia, New York 12302 is interested in building a garage on her property. This application requires Zoning Board of Appeal's approval in accordance with Village Code Section 250-13. (A). Building Regulations. It is in an SR-5 District and height limits for accessory building heights shall not exceed 15 feet.

Also, Village Code Section 250-13. (C). Accessory Buildings shall observe front and side yard requirements of 5 feet but on the rear half of the lot may be placed not less than 4 feet. In addition to the above, SEQRA approval in the short form for "Lead Agency" is required for removal of the existing garage and placement of the proposed 2 car garage and loft.

Chairman Terry Jackson briefly explained the 5 criteria for area variances:

In making its determination, the zoning board of appeals shall take into consideration 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. In making such determination the board shall also consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The board of appeals, in the granting of area variances, shall 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 applicant Kimberley Heintz-Bongermino introduced herself and made her presentation as follows:

- the garage will accommodate her husband's woodworking tools for personal use because there isn't enough room for them in the basement due to having a laundry room, a water softener, wood and desk, etc.
- currently they pay \$135.00 a month for storage of tools
- the garage will not increase traffic
- there will not be any apartments or living space in the loft; there isn't any water
- no commercial activities would operate out of the garage
- to build out at ground level would not create enough space for the garage
- the removal of the existing garage and installing a new one is a positive addition
- the neighbors signed a petition in agreement of the proposed garage
- the proposal is an asset to the area and contributor to the tax base

The applicants are looking for a 2' variance from the north side of the side yard, and 4' variance from the height restriction. The Village ordinance is for 5' on the side yard and 15' for the maximum height. Chairman Jackson asked how far back from the alley would the proposed garage be. It will be 8' back and lot coverage is limited at 30%.

Board Member Ken George asked if the applicants can lower the height of the loft by 2'. Why does the garage have to have a second floor? The second floor is for her husband's workshop and he needs the space for maneuvering picnic tables and other types of furniture. The applicants' stated that they would be interested in a 2 car garage and a little extra space for storage in the loft. Also, there will be an area in front of each stall to park a car and a paved pad outside for additional parking. The applicants stated that their immediate neighbors are in agreement with the space and the garage.

Chairman Jackson stated that if the Board agreed to increase the loft heights; the area variance then goes with the property forever. This means that the next owners may create an apartment in the loft area. The applicants stated that they should not be penalized for this issue. There were no other questions and the public hearing portion of the meeting closed at 7:20 p.m. and deliberations began.

The Board discussed how this variance request relates to the five criteria:

- Chairman Jackson said it won't be a detriment to the neighborhood but there is a concern with the size of the loft for future use.
- Is there a feasible alternative in granting the variance? A 2 car garage can be built without a loft, thus no need for a variance.
- Is this a substantial request? Yes, it is substantial because the side yard setback is 5' and they are asking for 3'. Also, the request is seeking 4' above the 15' maximum height.
- Will it have an adverse impact? No, it will not; it is an improvement to the existing garage.
- Is it self-created? It is but applicants are interested in the 2 car garage and space to accommodate them. Also, the loft area will provide space for their woodworking hobby.

Building and Plumbing Inspector Luis Aguero explained to the applicants that the height issues have appeared in a couple of zoning applications in the Village and that is why the height limitations were put in place.

The Scotia Police Department and the Scotia Fire Department did not have any issues with this application. The Schenectady County Department of Economic Development and Planning deferred this application to local consideration. SEQRA is required for this application and was determined by the Board to have a nonsignificant declaration or impact to this application.

Board Member Ken George stated if this variance was granted we are setting a precedent and nullifying the intent of the height restrictions. Maybe the application should be amended and lower the height of the loft. The applicant stated that the footage requested is the lowest height for the garage and style that they are interested in.

Deliberation ended at 7:45 p.m.

After a lengthy discussion, the following motion was made.

**MOTION:** Zoning Board Chairman Terry Jackson formed a motion in the affirmative for the Zoning Board Members to vote to approve the proposed garage and loft from the applicant Kimberley Heintz-Bongermino of 11 Wallace Street. The motion would be granted to permit a 2' variance from the 5' side yard restriction and a 4' variance from the 15' height restriction.

**Motion:** Tom Tiberio **Seconded:** Jeff Parry  
**Ayes:** Jeff Parry, Tom Tiberio, Ken George  
**Nays:** Terry Jackson, Heather Gray  
**Motion Granted.**

There was a motion to accept the SEQRA form as submitted. Demolishing the existing garage and constructing the proposed garage does not cause a significant impact.

**Motion:** Jeff Parry **Seconded:** Tom Tiberio  
**Ayes:** Jeff Parry, Tom Tiberio, Heather Gray, Terry Jackson, Ken George  
**Nays:** None  
**Motion Granted.**

Zoning Board Member Ken George made a motion and Tom Tiberio seconded to approve the Minutes from the August 22, 2016 meeting.

**Ayes:** Ken George, Tom Tiberio, Jeff Parry, Terry Jackson, Heather Gray  
**Nays:** None  
**Motion Granted.**

**CASE #2: ANTHONY CARUSO – LIVINGSTON AVENUE (TAX ID NUMBER 39.46-1-9.111) SCOTIA, NY 12302**

Anthony Caruso, the applicant is interested in constructing multi-family dwellings on his property on Livingston Avenue (Tax ID Number 39.46-1-9.111) Scotia, NY. This application requires zoning approval for use variances for the following reasons. The Village Code Section 250-11. Permitted Uses (A). Principal Uses Permitted: the following uses shall be permitted within all SR-Single Residence Districts: (1) one-family dwellings. SEQRA approval is also requested for this application.

Anthony Caruso, the applicant and Luigi Palleschi, the site engineer were in attendance. They gave a presentation. The size of the lot is approximately ¾ of an acre. The lot is wooded and has been on the market for quite some time. They are interested in building a predominately 5 unit building with 2 apartments each with a garage for every apartment. The neighborhood has single, double and multi-family homes. The site is currently wooded and zoned in a Single Family Residential area. One part of the project would include extending the water and sewer lines and installing a fire hydrant. The site engineer, stated that connecting to the water and sewer when building a single family residence is not cost effective and would cause a hardship. It's more cost effective to build a multi-family structure.

The applicant has met with the building and plumbing inspector and planning board once and was told he would have to go back to the planning board and also, meet with the zoning board. The building and plumbing inspector wanted it clarified that he did not say to the applicant that he was in agreement with the project but explained to the applicant how to proceed with the project.

The applicant is interested in making the structure appear residential with shingles and gabled roofing, etc. There would only be one curb cut and one garage for every unit with a parking space outside for each unit. The area will be landscaped and lighting will be minimal. The setbacks are within the requirements for Single Family Residential at 28% coverage.

Chairman Jackson read the requirements for a use variance to the board members:

- the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- 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;
- that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- that the alleged hardship has not been self-created

The board in granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved 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.

A board member questioned how many units there will be and was told that there will be 10 total units with 10 garages. One for a vehicle in the garage and one in front of the garage.

The zoning board questioned water runoff. Does the applicant have studies of water runoff? The applicant stated that they will have to do studies.

Also, the board questioned the scale of the investment. The applicant stated they have not done actual studies but the rent per unit will be approximately \$800 - \$1100 per unit/per month.

Chairman Jackson told the applicant that he has to show a financial hardship backed up by documentation. The applicant stated he has prices of single family residences in the area.

While he can provide documentation at a later date to the Zoning Board, he has no written documentation of hardships at this meeting.

A board member asked what the area was filled with now. The applicant stated that it was filled with organic material but that would have to be dug up and solid soil would have to be put down. Runoff will have to stay on site.

The Scotia Police Department and the Scotia Fire Department did not have any issues with this application. The Schenectady County Department of Economic Development and Planning deferred to local consideration but stated that it does not appear that the applicant has provided any “competent financial evidence” that he cannot realize a reasonable return and the zoning restriction is causing unnecessary hardship as required by NYS Village Law.

The meeting was then opened to the public.

The following residents had comments about the proposed application:

- Richard Keeler of 23 Washington Avenue was concerned with runoff and flooding into his back yard. There isn't a retaining wall or drainage pictured on the plans shown by the applicant.
- Sue Green of 23 Washington Avenue stated that they are in a 100 year flood plain and the area has flooded at least two times. There will be extra traffic with all the people parking on the street and some additional unwanted lighting.
- Leon Brunez of 31 Washington Avenue stated there are ice jams already and this would increase the problem. Also, trucks in the area during construction would be a detriment.
- Anthony and Susan Cappuccitti of 51 Washington Avenue stated that children would be affected with the increase in traffic in that area
- Julie D'Antoni of 29 Washington Avenue stated that during the flooding of Hurricane Irene her foundation was pushed in but it has since been fixed. She has lived in that area for 48 years and it is has flooded in 4 times. The water table is very high.
- Laura Brown of 37 Washington Avenue stated that the visual line of the proposed multi-family units will affect part of their living space and create a boxed in feeling. Washington Avenue is a blind curve and creates very busy traffic patterns especially for morning commuters.

Luis Aguero, the building and plumbing inspector stated that this application will have to be presented to the planning board with additional information and is still in the early stages.

Site engineer, Luigi Palleschi stated that if this board feels comfortable with the multi-family use then they will go forward with this application.

- Sue Green read a letter from resident Josephine Corsaro of 21 Washington Avenue who could not be at the meeting. She is strongly opposed to the application due to the risk of flooding, the deterioration of her property value and the increase in traffic flow on such a small street. She would be interested in having single family units only.

The letter was added to the minutes.

The board asked for clarification on the yes response to SEQRA 12. b. Is the proposed action located in an archeological sensitive area? The site engineer noted that NYS shows this area of the Mohawk River to be a sensitive area in general.

- Tom Neals of 39 Washington Avenue questioned the elevation being lower at Livingston Avenue than at Schonowee Avenue and Washington Avenue. He also stated there are ice jams every year. Vehicles will be lifted up by all the flood waters. If the neighboring area is filled with soil, then the areas will be flooded.

The digging will have to be investigated and the applicant will have to do more studies in the area.

The area is in a flood plain and any new construction will now have to be on slabs on grade without basements; 2' up above flood level.

Approximately 4' of clean fill is needed.

The public hearing portion of the meeting was closed at 8:40 p.m.

Chairman Jackson stated that the applicant has not provided the types of financial documentation needed to show hardship. Also, the property does not appear to be unique in relation to its surroundings. It would alter the character of the neighborhood because there will be more vehicles and traffic in the area. It is self-created because the applicant can build single family residential units in that area. The applicant stated he has checked into constructing single family homes and there isn't any money in it. The board told him again; he has not presented any evidence of this.

Board Member Tom Tiberio believed the Board should table this matter and give the applicant time to submit the necessary financial documentation at a subsequent Board Meeting. Chairman Jackson said the applicant should have had the necessary documentation at tonight's meeting and that the Board should vote tonight.

Village Attorney Lydia Marola was consulted by the zoning board as to the best way to proceed. After some discussion, the following motion was made.

**MOTION:** Zoning Member Ken George made the motion and Member Jeff Parry seconded that the application from Anthony Caruso for a use variance to build a multi-family dwelling on his property located on Livingston Avenue, Scotia, New York not be approved.

**Ayes:** Terry Jackson, Jeff Parry, Ken George, Heather Gray

**Nays:** Tom Tiberio

**Motion Granted:** The applicant has to resubmit his application with modifications.

The Board took no action on SEQRA.

**Training Status Report:**

Current Training Hours:	Chairman Terry Jackson	2.0
	Heather Gray	2.5

Tom Tiberio	0.5
Ken George	1.5
Jeff Parry	1.5
Bonnie Belfance	1.5
Dinemayer Silva	2.5

Chairman Jackson asked Secretary Busher to provide the ZBA Members with a reminder of the amount of training hours they have to date.

**Motion:** There was a motion to adjourn the meeting at 8:45 p.m.

**Motion:** Tom Tiberio **Seconded:** Terry Jackson

**Ayes:** Terry Jackson, Tom Tiberio, Jeff Parry, Heather Gray, Ken George

**Nays:** None **Abstentions:** None **Motion Granted.**

Respectfully submitted, *Catherine Busher, Zoning Board of Appeals Clerk*  
September 30, 2016 File Date