

**TOWN OF CORTLANDVILLE ZONING BOARD OF APPEALS**  
**Public Hearings/Meeting Minutes - Tuesday, 28 April 2015 – 6:45 PM**  
**Town Hall Court Room – 3577 Terrace Road – Cortland, NY**

**Board Members** (\*absent)

David Plew, Chairman  
John Finn  
Thomas Bilodeau  
Thomas Aloï  
Lenore LeFevre

**Others Present**

Bruce Weber, Planning/Zoning Officer  
Joan E. Fitch, Board Secretary  
John Folmer, Town Attorney

**Applicants & Public Present**

Jameson DelVecchio, Applicant; Attorney John A. DelVecchio; Robert Lucas for Empire Tractor, Applicant; James O'Mara, Applicant; Lois & Richard Kearney, Joseph Ludwig, Bruce A. Smith, Rick Gysel, Tyrone Heppard.

**The Public Hearings were opened at 6:45 p.m. by Chairman David Plew, who read aloud the Legal Notice as published in the *Cortland Standard* on 16 April 2015, as follows:**

Notice is hereby given that a Public Hearing before the Zoning Board of Appeals of the Town of Cortlandville will be held Tuesday, April 28, 2015, at 6:45 p.m. at the Raymond G. Thorpe Municipal Building, 3577 Terrace Road, in the Town of Cortlandville, New York to consider the following application pursuant to the 1986 Zoning Law:

1. *In the matter of the application of Jameson DelVecchio for property located at 3882 Highland Road, Tax Map No. 85.19-01-09.000, for a variance in the terms and conditions of Article IV, Section 178-17 A, to allow for the creation of two lots with an area less than required.*
2. *In the matter of the application of Empire Tractor for property located at 638 NYS Route 13, Tax Map No. 105.00-01-48.100, for a variance in the terms and conditions of Article XVIII, Section 178-112, Table 1, to allow for a greater number of building mounted signs and signs to be illuminated.*
3. *In the matter of the application of James O'Mara for property located at 726 Cedar Crest Dr., Tax Map No. 95.11-02-48.000, for a variance in the terms and conditions of Article IV, Section 178-17 A1, to allow for a front yard less than allowed.*

The above applications are open to inspection at the office of Bruce A. Weber, Planning & Zoning Officer, Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, NY, or call (607) 756-7052 or (607) 423-7490. Persons wishing to appear at such hearing may do so in person, by attorney, or other representative. Communications in writing in relation thereto may be filed with the Board or at such hearing.

David Plew, Chairperson  
Zoning Board of Appeals

(Note: Proof of Publication has been placed on file for the record.)

**PUBLIC HEARING #1****Jameson DelVecchio, Applicant/Lois H. Smith, Reputed Owner – 3882 Highland Road – TM #85.19-01-09.000 – Lot Sizes Smaller than Allowed**

Chairman Plew recognized Jameson DelVecchio and his attorney, John Ardin DelVecchio, who were appearing before the Board to request a variance to create two lots (from a 59,400 SF parcel) that would be smaller than allowed. Chairman Plew asked Attorney DelVecchio to explain the requested variance to the Board. Attorney DelVecchio stated that his client (also his brother) was currently under contract to purchase the subject property, contingent upon subdivision approval being granted by the Town. An area variance was required because lot size is a minimum of 30,000 SF and the subject lot is 59,400 SF; when divided equally, this would create two lots of 29,700 SF each, i.e., lacking 300 SF to comply with the requirements.

Attorney DelVecchio commented they would like to modify the application slightly, making the southernmost parcel 30,000 SF (which conforms), and the northernmost parcel 29,400 SF. He then proceeded to make responses to each of the five questions contained in the standard “balancing test” required for granting of an area variance, as follows:

1. *Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?*

Response: There are several parcels surrounding the subject parcel that are less than 30,000 SF. There would be no change.

2. *Can the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?*

Response: Overall benefit would be that southern parcel would be in compliance, and the northern parcel would have the lesser square footage.

Chairman Plew then asks the attorney, “Can I assume that these are one-family structures; they are not two-family structures?” Attorney DelVecchio responded that there was an existing one-family structure on the northern parcel; as far as any construction on the proposed southern parcel, that’s certainly up to my brother for future construction.”

Chairman Plew: “Is it going to be one-family or two-family?” Attorney DelVecchio answered that his brother hadn’t made that decision yet.

Chairman Plew: “Before this Board can make a decision, you have to make that decision. One-family or two-family?”

Attorney DelVecchio: “I think that that’s a factor that this Board can consider in its determination of the application, but I don’t think that the Board can require an applicant to actually disclose what the intended use for the property is going to be.”

Chairman Plew: “Okay, continue.”

3. *Is the requested area variance substantial?*

Response: Only asking for 600 SF less than what is allowed; that’s 1%, so it’s not substantial.

4. *Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?*

Response: Attorney DelVecchio stated he saw no environmental issue being affected. Proposed lot has everything the municipality requires: sewer, water, etc.

5. *Is the alleged difficulty self-created? This consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.*

Response: It is somewhat self-created, but the Board has to consider this in a non-dispositive fashion.

Attorney DelVecchio then added that PZO Bruce Weber had made an interpretation that the measurement of the parcel is less than 60,000 SF because it's measured from the boundary line of the parcel to its rear line. That determination could be appealed as usually properties are owned "to the centerline of the road." If this was considered, then the entire parcel would contain 65,000 SF. The Board, he thought, should take this into consideration, but it is not before the Board at this meeting.

Board Member Tom Aloï asked Attorney DelVecchio if there are water and sewer utilities available for the proposed lot. Attorney DelVecchio then asked his client if he had a letter affirming this, and he looked through his materials. Chairman Plew told the attorney that, "Evidently you're not prepared. . . so I would like to read...at this point I'm going to ask you to cease and I'm going to take some comments from the audience..."

Attorney DelVecchio: "I'm not done with my application—"

Chairman Plew: "I'm sorry, sir, you weren't prepared and I'm going to move along."

Attorney DelVecchio: "Mr. Chairman, I'm not done with my application, sir."

Chairman Plew: "Bruce, he wasn't prepared. Sir, sir, sir, sir, you have five items. You said five items. Please . . ."

Attorney DelVecchio: "But I wasn't done with my application."

Chairman Plew: "I think you were because you turned to him [his client] and you wanted something else and you have to read that because you didn't know what it said, so...."

Attorney DelVecchio: "A board member asked me a question..."

Chairman Plew (talking at same time): Excuse me, sir. Excuse me, sir. And you answered the question...

Attorney DelVecchio: "I did not answer the question..."

Chairman Plew: "Excuse me, sir, I'm going to say you are out of order. I'm going to move along. I will come back to you. You may have a chair."

Chairman Plew then read aloud a statement from Bruce Smith (who was present), a neighbor living directly across the street from the subject parcel. He wrote in opposition of granting the variance. A copy of this statement has been placed on file for the record.

Chairman Plew asked if there was anyone else who wished to speak regarding this variance request; responses were as follows:

Richard Kearney – 3887 Highland Road – Opposed to granting of variance. Request doesn't meet the requirement. Granting the variance would "open up the floodgates" for others as a precedence had been set. Rules are rules. Agrees with Mr. Smith's comments.

Rick Gysel – 3855 Highland Road – What is future use of the property? There are single-family homes there. Maybe they will place a two-family home on each parcel. Doesn't know what that density would do. There could be four families there. Opposed granting of the variance.

Joseph Ludwig – 3817 Highland Road – Walks the road daily. Subject is beautiful lot. Existing home will lose its front yard; value of existing house will be denigrated. Not good for the Town of Cortlandville. Opposed granting of the variance.

John Finamore – 4101 Highland Road – Owns lot next door and supports granting the variance. Other lots in area are all small lots. In favor of granting the variance.

Attorney DelVecchio commented that, in answer to Member Aloï's question, water and sewer are both available to the new lot, and he had an email from Mr. Alteri, Superintendent of the Town of Cortlandville Water & Sewer Department, affirming that.

Chairman Plew then stated that he was going to ask a question one more time before closing the public hearing: "Is it going to be a one-family or two-family?" Attorney DelVecchio stated his client did not know yet, and that he may live at this property.

Chairman Plew asked if there was anyone else from the audience who wished to speak on this variance request; there were none.

**With everyone heard who wished to be heard,  
Chairman Plew closed the Public Hearing at 7:15 p.m.**

#### DISCUSSION/DECISION

Member Aloï stated that he had visited the property and talked with some of the neighbors; some were in favor of the variance, some were opposed. There are others in the neighborhood who have less acreage than required.

PZO Weber clarified that 30,000 SF is the minimum required lot size for a single-family or two-family if on public water and sewer. A two-family residence is allowed subject to Site Plan Review by the Town Planning Board. There are all different-sized lots there.

Member John Finn then asked if the Board should be concerned with the fact that the application was changed from what had been announced in the Public Hearing Notice. Town Attorney John Folmer was asked this question, and he responded that the Notice, as published, was incorrect as it pertains to the modified application now before the Board; perhaps this matter should be tabled until proper notice can be published.

**A motion was then made by Member Finn to table this variance request. The motion was seconded by Member Bilodeau.** Attorney DelVecchio then stated that he would ask the Board to consider the application for the area variance as submitted. Again, Chairman Plew stated that before there was any vote, he wanted to know if a one- or two-family residence was going to be constructed. Town Attorney Folmer advised Chairman Plew that the "Board needs to acknowledge that what you are considering is the application as submitted and not the application as amended." The Board Secretary reminded the Chair that there was a motion on the floor, which was seconded, so a vote was needed. **The vote was then called for, with the results recorded as follows:**

**Ayes: None**

**Nays: Chairman Plew  
Member Finn  
Member Bilodeau  
Member Aloï  
Member LeFevre**

**Motion not carried.**

#### **This becomes Action #3 of 2015.**

Member Aloï then read aloud the questions contained in the required "balancing test," as shown below. Findings were recorded by the Board Secretary.

1. *Can the benefit sought by the applicant be achieved by a feasible alternative to the variance?*

Finding: No. All agreed.

2. *Would an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?*

Finding: Yes by Finn, Bilodeau, LeFevre, Aloï. No by Chairman Plew.

3. *Is the requested area variance substantial?*

Finding: No, it's less than 1%. All agreed.

4. *Will the request have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?*

Finding: No by Finn, Bilodeau, LeFevre, Aloï. No by Chairman Plew.

3. *Is the alleged difficulty self-created?*

Finding: No by Finn, Bilodeau, Aloï. Yes by Chairman Plew, LeFevre.

With no further discussion, a motion was made by Member Aloï that taking into consideration the five findings arrived at in the “balancing test,” the Town of Cortlandville Zoning Board of Appeals has determined that the benefit to the applicant outweighs the detriment to the neighborhood/community, and grants the area variance for the creation of two lots with an area less than required, as requested. The motion was seconded by Member LeFevre, with the vote recorded as follows:

**Ayes:**     **Member Bilodeau**  
              **Member Finn**  
              **Member Aloï**  
              **Member LeFevre**

**Nays:**     **Chairman Plew**

**Motion passed.**

**This becomes Action #4 of 2015.**

## **PUBLIC HEARING #2**

### **Empire Tractor, Inc., Applicant/Empire Tractor Real Estate Cortland, LLC, Reputed Owner – 638 NYS Route 13 – TM #105.00-01-48.100 – Signs – Greater Number & Illumination**

Chairman Plew recognized Bob Lucas, representing Empire Tractor who was asking two additional building-mounted signs as shown in the photos accompanying the application; illumination of the signs was also being requested.

Chairman Plew explained that there have been break-ins at this new store. The more lights on the property at night, the more this type of activity was discouraged. The Board discussed their usual requirement for turning off the illuminated signs at a certain time.

The Board discussed what was being requested. PZO Weber clarified that the applicant was allowed two signs on the building, and they are asking for four, with the signs to be illuminated. The square footage is within the requirements.

Chairman Plew asked if there was anyone else from the audience who wished to speak on this variance request; there was no one.

**With everyone heard who wished to be heard,**

**Chairman Plew closed the Public Hearing at 7:31 p.m.**

DISCUSSION/DECISION

With no further discussion, **a motion was made by Member Finn to grant the variance to allow for a greater number of building-mounted signs and signs to be illuminated, as requested, with the illumination to be turned off by 10 p.m. The motion was seconded by Member Tom Bilodeau, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Finn</b>		
	<b>Member Bilodeau</b>		
	<b>Member Aloï</b>		
	<b>Member LeFevre</b>		

**Motion passed.**

**This becomes Action #5 of 2015.**

**PUBLIC HEARING #3**

**James J. O'Mara, Applicant/Reputed Owner – 726 Cedar Crest Drive – TM #95.11-02-48.000 – Front Yard Less than Allowed**

Chairman Plew recognized the applicant who was seeking a variance for a front yard setback of 35 feet, but he stated he could go 40 feet, as shown on the sketch accompanying the application.

Chairman Plew asked if there was anyone else from the audience who wished to speak on this variance request; there was no one.

**With everyone heard who wished to be heard,  
Chairman Plew closed the Public Hearing at 7:33 p.m.**

DISCUSSION/DECISION

With no further discussion, **a motion was made by Member Bilodeau to grant the variance for a setback of 40 feet. The motion was seconded by Member Finn, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Finn</b>		
	<b>Member Bilodeau</b>		
	<b>Member Aloï</b>		
	<b>Member LeFevre</b>		

**Motion passed.**

**This becomes Action #6 of 2015.**

**APPROVAL OF MINUTES – 27 JANUARY 2015**

A motion was made by Member Finn to approve the Minutes of the 27 January 2015 Zoning Board of Appeals meeting, as submitted. The motion was seconded by Member Bilodeau, with the vote recorded as follows:

<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>
	<b>Member Finn</b>	
	<b>Member Bilodeau</b>	
	<b>Member Aloï</b>	
	<b>Member LeFevre</b>	

**Motion passed.**

**This becomes Action #7 of 2015.**

**ADJOURNMENT**

At 7:35 p.m., on a motion by Member Finn, seconded by Member LeFevre, with everyone present voting in the affirmative, the meeting was adjourned.

  
Joan E. Fitch, Board Secretary

Emailed to KS/KP, Bd. Members, JBF,  
BW, DD, TW & DC on 5/18/15.