

Town of Johnsburg
Zoning Board of Appeals
Tannery Pond
November 04, 2024

Attendance: Jim Jones, Cathy Allen, Erwin Morris, and Secretary Joann Morehouse

ABSENT: Reisha Thissell, Rick Bennett

Applicants: - Town of Johnsburg/Frontstreet

Guests: None

Public hearing: Meeting called to order 7:12 pm by Cathy Allen

V-05-2024-Town of Johnsburg-Ski Bowl Rd, North Creek-Tax Map # 66.-1-14

Attorney Mike Hill was on the phone to represent the Town of Johnsburg in this application. The Town is asking for 25 feet of relief from the side setback. They board had some discussion between themselves and Mike Hill the Towns attorney.

Mr. Jones made a motion to close the public hearing, seconded by Mr. Morris all in favor.

Call Regular meeting to order: Ms. Allen called the regular meeting to order at 7:21 pm.

Approval of Minutes: Minutes could not be approved because there was not a quorum from the last meeting present

New Business:

V-05-2024-Town of Johnsburg-Ski Bowl Rd, North Creek-Tax Map # 66.-1-14

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Town of Johnsburg Zoning Board of Appeals

Decision on Variance Application V-05-2024

November 4, 2024

Joint Applicants: Town of Johnsburg & FrontStreet Mountain Development

Background: In 2005, the Town of Johnsbury (“Town”) and FrontStreet Mountain Development (“FSMD”) entered into a written contract (the “Master Agreement”) to allow for a comprehensive development of certain lands west of Route 28 for recreational and residential purposes. Some of the lands are owned by the Town and some by FSMD.

Under the Master Agreement, FSMD has transferred certain property to the Town and other property to the Olympic Regional Development Authority (“ORDA”) which operates the Gore Mountain Ski Area (“Gore”).

One provision of the Master Agreement requires the Town to transfer certain land, currently identified as Tax Map No. 66-1-14, to FSMD when FSMD obtains the approvals necessary to develop a hotel on a portion of that land. The Adirondack Park Agency (APA) has already approved several permits which collectively allow the overall recreational and residential development planned on the project area west of Route 28, including the intended hotel.

In order to develop a hotel, a subdivision approval is necessary to divide the Town’s property (Tax Map No. 66-1-14) and FSMD’s property (Tax Map No. 66-1-18.11) and join portions of them together as shown on the subdivision map that accompanied the Variance Application. A Subdivision Application for this purpose is currently pending at the Planning Board.

When the Planning Board initially reviewed the subdivision application at its meeting on August 26, 2024, they found that a ski lodge being built by ORDA does not meet the required setback distance (30 feet) from the southeasterly boundary line of a parcel that would be created by the proposed subdivision. A previous Planning Board approval issued in 2007, in conjunction with APA review of the overall project, did not contain any acknowledgement that ORDA’s ski lodge would not meet the required setback, and there is no documentation showing that ORDA applied for a variance in 2007. (ORDA would not have been required to seek a variance because, as a State agency, ORDA is exempt from the Town’s Zoning Law.)

Our Planning Board cannot legally approve a proposed subdivision that does not meet required setbacks unless there is an approved variance for relief from the

encroachment. Ordinarily, the person, company or organization creating the encroachment would be expected to apply for the needed variance. However, in this case ORDA has created the encroachment and is exempt from the Town's Zoning Law, so it does not have to obtain the needed variance. That is why the Town (as the owner of one involved parcel of land – Tax Map No. 66-1-14) and FSMD as owner of the other involved parcel (Tax Map No. 66-1-18.11) for the proposed subdivision have jointly submitted Variance Application V-05-2024 seeking approval of the variance needed to relieve the encroachment by ORDA's ski lodge. The lodge is five feet from the existing boundary line of Parcel B and would likewise be five feet from the parcel to be created by the proposed subdivision. A 25-foot setback variance is therefore required to relieve the encroachment. The variance would allow the Planning Board to approve the subdivision necessary for the Town to transfer Tax Map No. 66-1-14 to FSMD so the hotel development can proceed as part of the overall development plan approved by APA.

Consideration of Variance Criteria:

- 1) **Whether an undesirable change in the character of the neighborhood will be produced or a detriment to nearby properties will be created by the granting of the area variance.** *APA has already approved the use of the proposed resulting parcel for commercial retail purposes and did so with the knowledge that ORDA's ski lodge would be closely adjacent. The ORDA ski lodge and planned commercial retail development on the subdivision parcel are both part of the much larger comprehensive recreational and residential development project already approved by APA, so there will not be any unexpected or detrimental change to the character of the area as envisioned under the APA permits for the overall project. The variance and resulting subdivision creating the commercial retail parcel are fully consistent with the overall character of the approved project and there will not be any impact to ORDA's ski lodge that was not contemplated by APA when it approved the project. There are no other adjacent or nearby properties owned by others.*
- 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.** *There is no feasible alternative to an area variance. The Town is contractually obligated to convey Tax Map Parcel 66-1-14 in its entirety to FSMD and cannot transfer any portion of the parcel to ORDA in order to alleviate the encroachment created by ORDA.*
- 3) **Whether the requested variance is substantial.** *The variance being requested is 25 feet of a 30-foot setback requirement. Mathematically, it would be an 83% variance, which would appear substantial. However, in the context of the overall*

approved development, it is consistent with the generally denser placement of structures throughout the already approved project. Thus, taken in context, the variance is not unreasonable or substantial.

- 4) **Whether the variance will have an adverse impact on the physical or environmental conditions in the neighborhood.** *The variance will allow a subdivision that will permit commercial retail development on a resulting parcel as approved by APA in the permits for the overall project. The requested variance is exempt from environmental review by the ZBA because APA conducted the required environmental review as part of its approval process and determined that there would not be any significant adverse physical or environmental impacts.*

- 5) **Whether the alleged difficulty was self-created, which consideration shall be relevant to the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.** *Neither the Town nor FSMMD created the difficulty in this case, as neither of them had any control over the siting of ORDA's ski lodge, which does not meet the required setback from the proposed lot line.*

Is the requested variance the minimum variance necessary for the applicant to make reasonable use of the property? *The requested setback variance of 25 feet is the minimum variance necessary to relieve the encroachment by ORDA's ski lodge and enable FrontStreet to make reasonable use of the parcel adjacent to the ski lodge that will result from the proposed subdivision.*

The proposed variance is exempt from environmental review by the ZBA under SEQRA because the location of the ORDA ski lodge and the proposed subdivision of Parcel B have been reviewed and approved by APA as part of a much larger Class A regional project.

After discussing and considering all five of the criteria enumerated above and the Board's reasoning regarding each of them, as well as discussing and considering whether the requested variance is the minimum necessary, all as set forth above, the following Motion was made:

Motion to Approve a 25-foot setback variance for Variance Application V-05- 2024 to relieve the encroachment by the ORDA ski lodge with the condition that any

building(s) constructed on the parcels resulting from the subdivision of Parcel B must comply with all applicable fire codes.

Motion made by: Jim Jones
Seconded by: Erwin Morris

Those in Favor: Cathy Allen, Jim Jones, and Erwin Morris

Those Opposed: None

Old Business: None

ZEO Report: None

Privilege of the Floor:

Mr. Jones made a motion to close meeting at 8:51pm, seconded by Mr. Morris all in favor.

Respectfully,

Joann M. Morehouse

**Next Zoning Board meeting scheduled
for December 2, 2024 at the Tannery Pond**