

Zoning Board of Appeals Minutes  
September 4, 2014

Present: Robert Whitman, Chairman  
Douglas Hooper  
Thomas Danielson  
Richard Nygren  
Tim Young

Also present: Attorney Joel H. Seachrist, Ben Gustafson - Hunt Engineers, and Jocelyn Bos – Calamar, Rob Liebers, Nick Bradish, Mary Jo Bradish, Pat Dupere, Greg and Lorri Turner, James Kinsler, Beverly Kinsler, Thomas Myers, Beverly Myers, Scott Bradish, Woody Bradish, Pat Zeger, James Zeger, John Carpenter, Edward Chambers, Chris Skoglund, Bill Israel, Candy Young, Gary Starr, Ron Hicks, Carol Rasmussen, Dave Gniewecki, Town Clerk Darlene Nygren, Code Enforcement Officer Jeff Swanson, Town Supervisor Jesse Robbins.

A public hearing before the Zoning Board of Appeals of the Town of Busti was held on Thursday, September 04, 2014 at 6:30 p.m. at the Busti-Lakewood Recreation Center, 9 W. Summit Avenue, Lakewood, New York, to consider the following applications:

Application of Christopher R. Skoglund, 954 Pewter Rock, Lakewood, New York for an area variance to build a garage addition. Property is owned by him, and is known as Section 385.03, Block 1, Lot 25.7.12 of the official tax map of the Town of Busti. Property is in the Conservation/Residential District. The Board reviewed the balancing test for a variance and determined that the benefit to the applicant outweighed any detriment to the neighborhood. Douglas Hooper made a motion to grant the application of Christopher R. Skoglund to build a garage addition. The addition will be 31' x 12' and will be no closer than 11' to the eastern boundary line. Garage will be one story and will match existing siding and gables. Seconded by Richard Nygren. All aye. Carried.

Application of Gregory W. Turner, 1772 Radnor Road, Cleveland Heights, Ohio for an area variance to build a second story addition. Property is owned by GLMD, Ltd., located at 4388 West Summit Avenue, Lakewood, New York and is known as Section 385.05, Block 4, Lot 15 of the official tax map of the Town of Busti. Property is in the Conservation/Residential District. The Board reviewed the balancing test for a variance and determined that the benefit to the applicant outweighed any detriment to the neighborhood. Richard Nygren made a motion to grant the application of Gregory W. Turner to build a second story addition, to be built on the present footprint and to be no higher than 28'. Seconded by Thomas Danielson. All aye. Carried.

Application of Nicholas S. Bradish, 2397 Keller Road, Ashville, New York for an area variance to build a deck. Property is owned by him, and is known as Section 367.20, Block 1, Lot 52 of the official tax map of the Town of Busti. Property is in the Multi-Family Residential District. After listening to statements and concerns from Mr. Bradish and several area residents, the board determined that the deck dimensions needed to be clarified prior to making a final decision. Tim Young made a motion to table the application until the September 24<sup>th</sup> meeting. Seconded by Richard Nygren. All aye. Carried.

Application of Calamar, Inc., for a special use permit and area variances allowing it to

construct and operate a planned unit residential development pursuant to Section 405-28(J) of the Town of Busti Zoning Code, on property to be purchased by it at 2123 Southwestern Drive, which is located in the Multifamily Residential (MR) District and designated on the official tax map of the Town of Busti as Section 386.00, Block 1, Lots 11, 12, 14, and 17. Thomas Danielson moved the following motion, which was duly seconded by Tim Young.

**ZONING BOARD OF APPEALS  
TOWN OF BUSTI, CHAUTAUQUA COUNTY, NEW YORK**

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In the Matter of the Application of  
**DECISION**  
Calamar Enterprises, Inc. for a  
Senior Housing Complex

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**COMBINED AREA VARIANCE FINDINGS &  
AND SPECIAL USE PERMIT**

Calamar Enterprises, Inc., seeks a Special Use Permit and three (3) area variances that would permit it to construct and operate a planned unit residential development at 2123 Southwestern Drive, on property designated on the official tax map of Chautauqua County as Section 386.00, Block 1, Lots 11, 12, 14, and 17.

**FACTUAL BACKGROUND**

1. Calamar Enterprises, Inc., hereinafter the “Applicant”, has submitted an application for a Special Use Permit and three (3) area variances that would permit it to construct and operate a 116-unit senior housing facility at 2123 Southwestern Drive. The development would consist of an “L”-shaped residential building, asphalt driveway and parking areas, parking garages, sidewalks, landscaping and associated utilities. The facility would have access to municipal water and sewer systems.

2. The subject property is located within the Multifamily Residential (MR) District. In that district “multifamily residences, including townhouses and apartment houses” are permitted within a planned unit residential development. The plans submitted by the Applicant appear to comply with all dimensional requirements for a planned unit residential development except with regard to three matters for which area variances will be required, as shown on the below

chart:

	<b>Town Code Section</b>	<b>Code Requirement</b>	<b>Proposed by Applicant</b>	<b>% Variance</b>
<b>Building Width (ft.)</b>	§405.26(E)(3)	4:1 (length-to-width)	6.56:1	64%
<b>Parking Spaces</b>	§405.16(F)	2 spaces/unit (232)	1.5 spaces/unit (174)	25%
<b>Driveway Width (ft.)</b>	§405.38(C)	25' maximum	26'	4%

3. The procedure for approving a Special Use Permit for a planned unit residential development as set out in Section 405-23 of the Town Zoning Code requires the Town Planning Board to review the application then make a recommendation to the Zoning Board of Appeals, and, if the Planning Board has recommended approval, then the Zoning Board of Appeals must hold a public hearing and render a decision. In this instance, the Zoning Board of Appeals will also undertake concurrent review of the three area variances described above.

4. The Town Planning Board reviewed the application and during an August 5, 2014 meeting recommended approval without conditions.

5. The Applicant will enter into a payment-in-lieu-of-taxes agreement with the County of Chautauqua Industrial Development Agency (CCIDA) and the relevant taxing jurisdictions. As part of that process, the CCIDA acted as lead agency for purposes of the State Environmental Quality Review Act, conducted a coordinated review with other agencies including the Town of Busti, and on July 22, 2014 adopted a resolution finding that the project would have no significant adverse environmental impacts, otherwise known as a Negative Declaration.

6. The Town referred the application to the Chautauqua County Planning Board pursuant to Section 239-m of the General Municipal Law and the County's Department of Planning &

Economic Development responded with a letter dated August 6, 2014 advising that the matter is of local concern.

7. The Zoning Board of Appeals held a public hearing on the application on August 20, 2014, at which all attendees spoke in favor of the project. Notices of this hearing were sent to the Town of Ellicott and Village of Lakewood pursuant to Section 239-nn of the General Municipal Law and neither entity submitted written or verbal comments.

8. The Town also had Rex Tolman, a professional engineer associated with Tolman Engineering, PLLC, review the engineering plans for the project and he submitted an engineering report complete with detailed comments and an assessment that, in general, the plans were of "high quality".

9. The record includes all oral arguments, letters and submissions made to the Planning Board and Zoning Board of Appeals, including those made or submitted at a public hearing held by the Zoning Board of Appeals on August 20, 2014, and any other documents incorporated by specific reference during the hearing and herein.

#### **AREA VARIANCE FINDINGS**

10. The Zoning Board of Appeals ("ZBA") in acting on this variance application is obliged to reach its decision by applying the facts found in the record against the Town of Busti Zoning Code and Sections 267-a and 267-b (1) (3) and (4) of the Town Law and their prodigy cases.

11. New York Town Law §267-b(3)(b) and Town of Busti Zoning Code §405-84 require that the ZBA perform a balancing analysis of any application for an area variance that considers the benefit to the applicant if the variances are granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community the variances would cause.

12. As part of this balancing analysis, the ZBA must consider the following questions:

(a) Whether an undesirable change would be produced in the character of the

neighborhood or a detriment to nearby properties would be created by the granting of the area variance;

- (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) Whether the requested variances are substantial;
- (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) Whether the alleged difficulty was self-created.

13. In the paragraphs that follow we will address each of those five factors with regard to the requested variances.

14. With regard to the variance requested for the building width, the ZBA finds as follows:

(a) The proposed building is similar to other buildings located within the area, including the school buildings located across Southwestern Drive and the Emeritus at Lakewood facility, which is 600 feet long by 50 feet wide. Furthermore, the building would be situated behind and down a hill from Southwestern Drive and screened with foliage and vegetation so that very little of it will be visible to passersby.

(b) The configuration of the building is designed for the topography of the parcel, and it would be necessary to construct a four-story building to comply with the Code's length-width ratio. Such a building would have a greater visual impact on Southwestern Drive and adjacent parcels than the one proposed.

(c) While the 64% increase is considerable, given the context and design of the proposed structure, we do not find it to be substantial for purposes of this analysis, particularly, since a strict application of the 4:1 ration would require the Applicant to construct a building that would have a greater visual impact on neighboring properties.

(d) The structure as proposed has a smaller footprint than if the applicant were required to construct multiple buildings that met the 4:1 ratio so that less earthwork will be

required during construction and there will be less stormwater runoff in the future.

(e) The alleged difficulty is self-created.

15. With regard to the second variance for the number of parking spaces per unit, the ZBA finds as follows:

(a) The elimination of approximately 58 parking spaces would have a net benefit for the neighborhood in that the freed-up space can be used for greater setbacks and natural landscaping.

(b) The project probably could comply with the code requirement, but it would require more site disturbance, more earthwork, and more expensive stormwater management design. Granting the variance is more beneficial to the Applicant, the environment, and the neighborhood than the alternative.

(c) A reduction of 25% from the required ratio is not substantial. The Applicant has sufficiently demonstrated that the proposed 174 spaces are adequate for 116 units based on its experience with other similar facilities.

(d) The reduction will have positive impact on the environmental condition in the neighborhood in that it will reduce the amount of impervious surface and reduce stormwater runoff from the facility.

(e) The alleged difficulty is self-created.

16. With regard to the third variance requested for driveway width, the variance is so insubstantial that we will dispense with a full discussion of the balancing test and find that the extra one foot of pavement will have no impact on the character or physical environment in the neighborhood, and, in any event, the Applicant must build the driveway to a width of 26' because

it is required by the New York State Fire Code.

#### **SPECIAL USE PERMIT FINDINGS**

17. The ZBA hereby finds that the submitted application is consistent with the approval made by the Town of Busti Planning Board.

18. The application conforms with all provisions of the Multifamily Residence District, and, in particular, with those requirements of a planned unit residential development, except as permitted by the variances granted herein.

19. Finally, the Applicant has adequately addressed our concerns regarding stormwater runoff prevention, fire safety, setbacks and landscaping, parking and lighting, and the general aesthetic appeal of the project.

#### **DETERMINATIONS**

20. **NOW, THEREFORE, BE IT RESOLVED** that the Zoning Board of Appeals adopts the following conclusions of law, with regard to the three requested variances:

a. No undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variances.

b. The Applicant has sufficiently demonstrated that the benefits sought cannot be achieved by some method other than the requested area variances.

c. The variances are not substantial.

d. The variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

e. The alleged difficulty was self-created.

f. The benefit to the Applicant from each and all of the variances outweighs any detriment to the health, safety, and welfare of the neighborhood or community the variances

might cause.

g. Accordingly, for the foregoing reasons, the application of Calamar for three area variances necessary to permit the construction and operation of a 116-unit planned unit residential development is approved.

21. **AND BE IT FURTHER RESOLVED**, that the application to construct and operate a planned unit residential development on the said property (the "Use"), be and hereby is authorized and approved subject to the conditions and requirements hereinafter set out:

a. The Applicant shall undertake the Use in accordance with the application, maps, and plans submitted to the Town, and in accordance with the area variances approved by the Zoning Board of Appeals in conjunction herewith, and agrees to be bound by the terms of the application and the conditions of this permit. While we do not impose any special conditions on the permit, we do encourage the Applicant to review and take into consideration those recommendations made by Rex Tolman in his engineering review dated August 28, 2014.

b. If construction of the Use has not commenced within one year of the issuance of this permit, this Special Use Permit shall become void and the Applicant shall be required to apply for a new permit should it intend to continue the project.

c. The terms, conditions, and requirements of this permit bind and obligate the Applicant, its successors and assigns. This permit shall not be assigned or transferred, in whole or in part, without the prior written consent of the Town, except as otherwise herein noted.

d. Any failure or omission on the part of the Applicant to carry out any condition or requirement herein or in accordance with the terms or requirements of any statute, local law, ordinance or regulation, may be deemed a violation of the Town of Busti Zoning Code and unless corrected in not more than 10 days following the service of written notice of such violation upon the Applicant, may subject them to the penalties therein. Continued violations after written notice

may result in revocation of this Special Use Permit.

Dated: September 4, 2014

_____ Robert Whitman _____	Voting	_____ Aye _____
_____ Douglas Hooper _____	Voting	_____ Aye _____
_____ Thomas Danielson _____	Voting	_____ Aye _____
_____ Richard Nygren _____	Voting	_____ Aye _____
_____ Tim Young _____	Voting	_____ Aye _____

Motion made by Robert Whitman to adjourn the meeting at 7:35 p.m. Seconded by Douglas Hooper. All aye. Carried.

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Susan Huffman  
Deputy Town Clerk