

**TOWN OF BERNE
ZONING BOARD OF APPEALS
P.O. Box 57
Berne, New York 12023**

PUBLIC HEARING

Date: September 26, 2007

Present: James Fallon, Chairman; Terry Adams, John Carsten, Killeen Cirella, ~~James Fallon~~ and Werner Knopp, Zoning Board Members; Carol Crouse, Town Board Liaison; Michael Vincent, Planning Board Member

Guests: Mark Dibble; Diane Dibble; Walter Wissert; Claudia Wissert; Helen Proper.

Wissert – 1049 Huntersland Road, Parcel ID No.112-1-29

Mr. Fallon stated that Mr. and Mrs. Wissert are requesting an area variance to construct a two-car garage within 5'0" of the side property line, adding that the required distance is 10'0". Mr. Fallon stated that the Wisserts were denied a building permit for the garage, necessitating the area variance. Mr. Fallon added that the property is an existing undersized lot.

Mr. Fallon stated that the first issue is the denial by the Building and Zoning Administrator (BZA). Mr. Fallon questioned if Mr. and Mrs. Wissert had any comments. Mr. Wissert stated that they wish to construct a two-car garage attached to the house. Mr. Fallon questioned if the original garage was a one and a half car garage, to which Mr. Wissert replied, "Yes". Mrs. Wissert stated that, as a result of the fire which destroyed their home and garage, the intent was to increase the size of the garage to allow for storage. Mr. Wissert added that the increased size would be preferable to a shed.

Mr. Fallon questioned the size of the Wisserts property, to which Mr. Wissert replied that the lot is "150'0" by 175'0". Mr. Carsten stated that the Planning Board's (PB) site review indicated that the lot was 130'0" by 150'0".

Mr. Fallon polled those in attendance for comments. Mr. Vincent stated that the Wisserts home was destroyed by the fire, adding that they now intend to erect a modular home with an attached garage on the property. Mr. Vincent stated that the Wisserts are "great members of the community". Mr. Vincent added that the Wisserts' intent is to have all living space on one floor.

Mr. Fallon questioned if there was any correspondence from adjacent landowners concerning the request, to which the reply was "No". Mr. Carsten questioned the Wisserts as to their neighbor, to which Mr. Wissert replied, "Boyle", adding "he's fine with it". Mr. Carsten questioned when the Wisserts were in contact with Mr. Boyle, to which Mrs. Wissert replied, "A month ago". Mr. Carsten questioned if Mr. Boyle was in accord on the request, to which the reply was "Yes". Mr. Carsten added that the PB recommends the request.

Mr. Fallon stated that the denial by the BZA would be addressed, adding that, based on the 10'0" requirement, the BZA's denial was appropriate. Mr. Fallon stated that the appeals process to overturn the decision will be denied, resulting in the request for area variance.

Mr. Adams cited the 50'0" dimension from the house to the property line as shown on the site plan, questioning if the dimension would now be 5'0". Mrs. Wissert replied that the 50'0" dimension was to the neighbor's house.

Mr. Carsten questioned if the word "rubble" on the site plan was correct, to which the reply was "Yes", adding that the rubble area was the original location of the garage. Mr. Carsten questioned if the dimension of the garage would remain 24'0", to which Mrs. Wissert replied, "28'0". Mr. Carsten questioned if the garage would be 5'0" from the side property line, to which the reply was "Yes". Mr. Carsten questioned if the garage would be within 4'0" of the neighbor's building. Mr. Wissert replied that the neighbor is "tearing it down in three years". Mr. Carsten stated that the issue is irrelevant.

Mr. Fallon read the stipulations for an area variance from the zoning ordinance.

Mr. Fallon questioned if the request would pose an undesirable change or detriment, polling the members for comments, to which there was no reply.

Wissert (Continued)

Mr. Fallon questioned if an alternative to the area variance would be possible, to which the reply was "No". Mr. Knopp questioned if the garage could be placed on the opposite side of the house. Mr. Fallon questioned if there was a solution other than the area variance. Mrs. Wissert stated that no other location on the property would be possible. Mr. Knopp questioned if the original garage was in the same location, to which the reply was "Yes".

Mr. Fallon stated that the variance request was substantial, adding that fifty percent of the requirement is being requested.

Mr. Knopp questioned the number of neighbors to the Wisserts. Mrs. Wissert stated that there are two houses across the road and one adjacent. Mr. Knopp stated that there are no objections from the adjacent landowners to the two-car garage, adding, "If there was a room full of people, it could be a different story".

Mr. Fallon questioned if the variance would result in an impact on the surrounding area, to which Mrs. Wissert replied, "I don't think so", adding that storage in the garage would be "better than having stuff outside".

Mr. Fallon questioned if the hardship was self-created, adding, "It is because it's what you had". Mr. Knopp stated that the house and garage burned down. Mr. Fallon agreed, adding that the garage is "now bigger".

Mr. Fallon stated that, per the zoning ordinance, the minimum variance could be granted. Mr. Fallon questioned the Wisserts if 5'0" was required or could the number be reduced, thereby reducing the percentage requested. Mr. Wissert stated that if the garage were reduced in width, it would be "too tight for cars".

Mr. Fallon questioned if the Wisserts had any documentation on the garage. Mrs. Wissert produced a floor plan of the house and garage. Mrs. Wissert added that the dimension on the garage doors was incorrect, adding that it should be 9'0". Mr. Knopp questioned Mr. Adams as to the typical size of a two-car garage. Mr. Adams stated that the dimension is generally 24'0", which would not allow for storage. Mr. Adams added that, by making the garage wider, the Wisserts could store their lawn equipment, etc. Mr. Adams stated that outdoor equipment storage could be placed in the rear of the garage, but that area is being used for laundry and interior storage areas. Mrs. Wissert stated that she wished to keep the laundry and storage rooms on the main floor due to her inability to go up and down stairs. Mr. Fallon questioned if the existing foundation would be used for the new modular home, to which Mr. Wissert replied, "Yes".

Mr. Fallon polled the Board for comments, to which there was no reply. Mr. Fallon questioned if a motion should be made to grant the area variance. Mr. Carsten stated that there was a need for the proposed width of the garage. Mr. Carsten made a motion to approve the area variance request. Mr. Knopp seconded the motion. All were in favor. The area variance was approved.

Respectfully submitted,

Jacqueline Murray, Secretary

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Dibble – 2915 Berne-Altamont Road, Parcel ID No.79-1-12

Mr. Fallon stated that Mr. Dibble obtained a use variance on August 23, 2006 to operate a minor car repair business at his home. As a stipulation of approval, a one year review of the variance was required.

Mr. Fallon, as a matter of record, stated that he has used Mr. Dibble's service and polled the members as to their opinion if it were a conflict of interest in this matter. There were no comments from the Board.

Mr. Fallon read a copy of the approval for the variance, adding that a copy of the pertinent portion of the zoning ordinance was included with the letter.

Mr. Fallon opened the issue to discussion.

Mr. Carsten questioned if any correspondence had been received. It was stated that a letter from adjacent landowners, James Proper and Chyrl Laxton, dated September 12, 2007, was received. Mr. Proper and Ms. Laxton had no objections to the Dibble business.

Mr. Fallon asked Mr. and Mrs. Dibble if they had any questions. Mr. Dibble requested that, if the review is approved, could two cars be added to the number of customer cars allowed on the property, from five to seven. Mr. Dibble added that their son and daughter have moved away from home and there are two less vehicles. Mr. Dibble stated that the customer cars would not be present outside at all times. Mr. Fallon polled the Board as to Mr. Dibble's request. Mr. Adams stated that he did not see the increased number of cars as a problem, adding that the Dibbles received a "pat on the back from the neighbors". Mr. Dibble stated that the number of cars will not always be seven.

Mr. Carsten questioned the number of personal cars the Dibbles own. Mr. Dibble replied that they have two cars and an "old Bronco". Mr. Carsten questioned if the total number of cars on the property would be nine, to which Mr. Dibble replied, "Ten". Mr. Carsten replied, "That's a lot of cars".

Mr. Knopp stated that Mr. Dibble "blindsided us" by requesting an increase in the number of cars. Ms. Cirella questioned if there were two family cars and five customer cars, to which Mrs. Dibble replied, "Yes". Ms. Cirella questioned if ten cars would always be present on the property. Mrs. Dibble replied, "No", adding that ten cars were present on two occasions. Mrs. Dibble stated that customers may not be able to immediately pick up their vehicles when the work is done, adding that they do not want to go over the quota.

Mr. Carsten stated that the Zoning Board of Appeals (ZBA) has no control over the number of personal vehicles, adding that, with the possibility of the Dibble children moving back home, the total number of cars could be twelve. Mr. Carsten stated that the ZBA has "a responsibility to the community". Mrs. Dibble stated that they would be "happy with five". Mr. Carsten stated that he had a concern with the number of cars.

Mr. Fallon requested that the Board consider "splitting the difference" by allowing six customer cars total. Mr. Adams made a motion to allow six customer vehicles. Mr. Knopp seconded the motion. All were in favor. The motion to allow six customer vehicles was approved.

Mr. Carsten questioned if the Dibbles would need to appear before the ZBA again, to which Mr. Fallon replied, "No", adding that the use variance is permanent. Mr. Knopp stated that if additional cars are to be added, a variance request would need to be submitted.

Mr. Dibble questioned the allowable size for a sign. Mr. Fallon directed Mr. Dibble to contact the Building and Zoning Administrator.

Mr. Fallon stated for the record that Mr. Dibble had obtained a New York State Department of Motor Vehicles business certificate.

Respectfully submitted,

Jacqueline Murray, Secretary