

## ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York  
Thursday – June 14, 2018  
ZB 2018-6

Present: Balassone, Conti, Heuck, Machelor, Muzzi, Parisi

Presiding: Anita Muzzi, Chairwoman

Pledge of Allegiance

Muzzi: Welcome to the Zoning Board of Appeals. Before we open our meeting I just want to explain a little bit about the Zoning Board because we are kind of a different animal than other Boards in the Town. We have to go by certain guidelines the State sets up for us. Although all of us would love for all of you to have what you come here for, we are bound to vet those applications and those variance requests that you give us through those laws. We're a little bit different. Tonight we have just area variances so each one of you has come to us with some sort of measurement you would like relief of. It should be pretty quick and hopefully very clear. The burden is always on the applicant to prove their case. It's not uncommon that if you feel you need to ask us to table this until the next month to get more documents or whatever may be lacking, you absolutely should ask us to do that.

**A motion to approve the minutes of May 2018 was made by Conti, seconded by Machelor and carried. (2 abstentions)**

**Heuck abstain, Conti Aye, Muzzi abstain, Machelor Aye, Balassone Aye**

Muzzi: Our first variance request is Simon, 4859 Creek Road. I went through the meeting minutes because I wasn't here at the last meeting but because they are transcribed it brought me up to speed on it. Last we left off you wanted to come back at this meeting with some I believe a new survey, possible some pictures, measurements....

**A motion to un-table the variance request was made by Conti, seconded by Machelor and carried.**

Muzzi: Do you have anything that you would like to present to us tonight in that regard?

Simon: I don't have pictures other than my phone. What I was hoping is that I could talk about it one more time. If you still weren't receptive to it what we could do is set up a site meeting where everybody could be there so you could see firsthand rather than seeing it on a map or a picture that could be squed so you could actually see the challenge that I have.

Muzzi: Although that is a great idea, we cannot come as a unit group to a site. It would then be a quorum so we are not allowed to do that. I know you were kind enough to invite us out when you marked off your property. Some of us did take advantage of that.

Simon: The next door neighbor who doesn't have a problem with this, either neighbor doesn't have a problem. The next door neighbor's house I did not have a measurement last month but I do now. It is 28' from the property line. Their house is offset 28'. If you were to give me the variance that would mean at 6.5' on their 28' so there would be 34' between both houses.

Conti: We talked about this at the last meeting too that it doesn't matter where they're at. Our only reference right now is your property, not where the other one is because he could turn around and build right up to where he needs to build to at 15' and then it makes it really tight. The variance today and everything else we're talking about is just your property.

Simon: I'm only trying to answer the questions that were brought forth, that you guys had for me.

Machelor: Refresh us on this part. We are talking about the south side and the distance between where you want to build your garage and the property line is how far?

Simon: It would be 6.5'.

Machelor: To the property line where you want to build?

Simon: Yes.

Machelor: At the property line he's 28' from the property line.

Simon: Correct, so there is a substantial difference. One of the other things is I went back and I am in construction, I went back and looked at it to see if there is any way that I could make it smaller? Is there anything I could do? After looking at it again I can't make it any smaller but I wanted to tell you the challenges why you can't make it smaller. The foundation wall is where it is. In order to make it smaller I would have to knock out the foundation and build a new foundation. I would lose the bearing wall of the house that's there now. It would be cheaper to tear down the whole house and start all over again. It's a huge cost undertaking to try and take that wall out. One of the other things that I was asked about and even though it's not in the mix is the drainage. If anybody has had an opportunity to go out and look and see the massive tree that is between the houses that the neighbor would like to see gone because she's afraid it's going to fall on their house. I'm concerned it's going to fall on our house. In any case the tree is stopping me from continuing the drainage that I've already put in which benefits both neighbors, myself and the neighbor on the north line.

Machelor: You're draining to the west?

Simon: I'm draining to the road correct.

Machelor: You can't drain back because of the tree?

Simon: I can't drain because of the topography of the land; there is not enough pitch to go to the back ditch. From the back if you were able to go look, you would see that I did cut a ditch from the back as far forward as I could, keeping a pitch that would allow the water to drain, which it has actually dried up my neighbor's property as well as my property. As I said last month when I bought the property there was a foot of water in the back yard. It was one of the reasons the house sold so cheap. Now because of the drainage I have drained my property, I've drained the neighbor on the right and the neighbor on the south and north by draining that property and filling it in and cleaning the debris that was back there.

Muzzi: I'm looking at the photograph of where your stake was that you put out for us. Can you tell me the dirt area that is next to the driveway; is that an elevation to your neighbor's property?

Simon: I have tapered that to the property line and not only do we have, if you look at your picture, not only do we have the drain back there that picks up the downspout and we are going to put a lawn drain there but what it's doing is creating a swallow in the yards so that the water runs forward to a receiver in the front of the house and out by the road.

Muzzi: How much higher are you than your neighbor at this point?

Simon: I'm not; I'm the same height as my neighbor.

Muzzi: Your driveway is the same height as their lawn?

Simon: 6" to the swale. There is a 6" swale there now so the water used to lay there in the front. Now it drains to the swale and then drains forward to the road where there is a receiver there as well.

Machelor: The question is, the side setback is 15' he is asking for relief. He has 18' on the drawing.

Conti: He has 18' and now he wants to drop that to 6'.

Simon: I have 18.5'. I'm dropping that down to a little bit over 6'.

Conti: So he's asking for a 9' variance.

Machelor: So you're asking for a 9' variance.

Simon: Yes.

Conti: Which is very substantial. We talked about that at the last meeting. One of the conversations we had at the last meeting was the fact that you were going to try and go back and change some things to bring it in a little bit closer so that it's no longer only 6'. Did you do that?

Simon: I did try to do that. I went over and looked at it with my architect. It's the structural wall. Where the garage is now is a bearing wall. I would need to take that wall out. That wall comes up higher than the basement floor. I would need to bust that wall out, take the whole garage down because there would be nothing holding the garage up now and build a new wall to the right. Can I approach again? If you look at the map of the house right here, here is the garage. Here is the bearing wall here and a fire place in here. In order to take this wall down, if you made it 6' and we would have to take this wall out. This whole wall.....if we went to 12' this would become a narrow bay here and I could put a 10' garage door right there. This would become a narrow bay and this would be a larger bay. It would be 2 garage doors. I would keep that wall up for the purpose of holding the roof up. This is a bearing wall. It's the end of the building.

Muzzi: You have 6' though between that line and your building line. That is the problem.

Conti: That is a very substantial variance.

Simon: I believe in the law and I believe there is a reason for every law. I think that's why they make the ZBA is so that you can look at things and say some cases are different. I didn't create the mess. I'm trying to make it look better. I'm trying to make the house more in fitting.

Balassone: The addition is creating the problem.

Simon: If you want it to look like a 50's house with a single garage door. This is a 12' door right here. There is a man door to the left.

Muzzi: How much of an overhang would you have?

Simon: I'm going to do a 2' so it looks like the rest of the house. The man door goes right in to the garage. The chimney shrinks up.....

Muzzi: Your overhang is an additional 2' past the 6'?

Conti: The overhang is actually 4'.

Simon: That is the beauty of the catch basin in the front right here. I picked up my drainage here and I'm picking up their lawn drainage right there, the tree is right here and it's actually on my property but it's hanging over. I would like to take the tree down because right now what it is that 4" perforated pipe goes to the tree. There is no digging that out. The tree is mine but it hangs over both properties.

Muzzi: Are there any of your neighbors trees that would encroach on that area?

Simon: No. In fact the neighbor has and what I did was I said I would take them down from the neighbor; an elderly couple has a couple big trees that are back here. If I was going to do this I would bring in an excavator to do this and I said I would take those trees down for them as well.

Muzzi: You have documentation from them they are okay with this?

Simon: I don't have documentation but they got a letter, I talked to them at length and they were good with it. They had the opportunity to come and say negative if they weren't.

Heuck: The electrical service comes over the garage?

Simon: Yes, the electric comes here from the pole and comes over head and comes right there to the garage. I think the extenuating circumstances too are that the other house is all the way to the other side of the property line so you have a huge area there.

Muzzi: We wouldn't take that in to consideration. They could come here next month and say they would like to put on an addition.

Conti: There is a Master Plan in the Town that we try to uphold the zoning part of it. That is where the problem is with this.

Simon: I understand.

Conti: You say you had flagged out your addition?

Simon: Yes, I put a stake here and a stake there, 2 stakes marking where it would be on the property line so you would be able to see it.

Conti: That stake right there? So the driveway goes beyond it?

Simon: Yes, that is where the house is where that stake is. The lot line is the drain.

Muzzi: One of the criteria we look at is substantiality. I think for me it's where I'm getting hung up. 15' is required, you want relief of 9' which is over half. That is pretty substantial. That's where I'm having a hard time. I'll be very honest with you.

Conti: The other part of the variance is the shed in the back.

Simon: I would take that out especially if I could get this.

Conti: Neither one has a bearing on the other. You asked for 2 things.

Simon: Let's just talk about the house.

Muzzi: We would need for you to formally ask us to remove the other variance that you are requesting. Just for the record 360-185B.

Simon: I formally ask you.

Heuck: Is that a garage a shed what is it?

Machelor: 24'x60' garage.

Conti: You wanted it to be 3' from the lot line?

Simon: I will make it 5'.

Heuck: I just want to ask, why wasn't this separate variances. You're talking about 2 different things here. You're talking about a garage on one side in the back part of the property and then you're also talking about an addition on to the one side of the house. It should have been actually separated and it should have been 1 for the garage and 1 for the addition.

Parisi: In a technical sense it is separate variances.

Heuck: It's really not clear what I've got here in front of me. That's why I'm asking that question.

Parisi: What is the question, should it be 2 applications or should it be 1 application? I guess I don't know what the question is.

Heuck: I would say it should have been 2 applications being that there are 2 separate structures that he wants to build.

Parisi: I guess that would be up to the ZBA whether they think...

Muzzi: I would agree with that. It's not the same area. Its 2 different code reliefs. We can look at that down the road.

Simon: One of the other things I wanted to point out was that the shed on the property that is existing is less than 2' from the property line with the overhang. It's just touching the property line. At one time the laws were different when they built that.

Conti: Somebody built it and never asked. We could have Tim remove that for you if you want.....

Simon: Was he here when they built it? If it's pre-existing you would have to show that the law didn't say that at the time. When did the law go in to affect? When was the shed built?

VanUden: Emery will challenge you.

Simon: Along with the idea of all this.....

Heuck: It has nothing to do with the application in front of us.

Simon: If I get the variance I'm going to move in there. I would take that shed right down.

Conti: I do have a question because I went out there. I knocked on the door because I saw your truck.

Simon: Nobody was there.

Conti: Your truck was parked in the front.

Simon: It could have been sitting there so it looks like someone is there.

Conti: I expected to see a little more staked out than just 1 stake in the ground. I see a for sale or rent sign in the front. Is it up for sale or rent? Are you trying to remodel to move in to it? What are you doing?

Simon: It's for sale or rent right today. If I'm able to get this variance that sign will be gone and I will be moving in to that house. I'm talking about putting a substantial amount of money in to the house. It does not make sense to sell it. I bought the house originally long story short, I bought it for my daughter and mother-in-law, unfortunately my mother-in-law died and my daughter moved away so now I'm sitting here with a house. If I can sell it today I would build what I want to build somewhere else but right now this is what I have. These are the cards that have been dealt to me so I'm trying to make an improvement in the Town by making that house look better and the neighborhood look better. It will increase the tax revenue to the Town too.

Conti: When you get in to city's that's where you see the houses built right on top of each other. This is what we are trying to avoid with the Master Plan and everything else and the zoning laws from preventing that from happening. That is what you're doing here is bringing a city type of a look. You're getting close to the lot line like a city versus being out in the Town where you have some space between the houses and that's where you're going with this here.

Simon: If the other house was closer to the line.....

Conti: When we get a variance from this guy next month, he wants to do an addition on his house 6' from his lot line. Now what? Are we going to say no to him when we just gave it to you a month earlier?

Simon: Then it would be too close. I understand that but that's not the situation you have. If that person wanted to build to the lot line they would have objected.

Machelor: You said they were an elderly couple. The new owner could be 35 years old and say gee whiz.

Balassone: You have to consider what's going to happen down the road. The house could be sold; he might want to do the same thing.

Simon: I understand that.

Balassone: It just starts a precedent we don't want to get in to really.

Muzzi: Would anyone on the Board have any comment as to this having an undesirable change to the character of the neighborhood other than the close proximity to the property line? Do we have discussion on whether the variance is substantial?

Conti: Yes, extremely substantial, it's over half the amount.

Muzzi: Is there any discussion on whether the variance will have an adverse physical or environmental effect on the neighborhood or district? I would just because it's been brought up the drainage aspect and the unknowns as far as the run off to that area, if we have a weather event that would dump a lot. Understandably you're trying to create a bit of a swale in between the properties but would that be enough to protect your neighbor from having her front lawn flood or anything like that.

Simon: That's why we put the drainage in. That's why you have not only the swale taking the surface water, the pipe in the ground is going to take the ground water and roof water.

Muzzi: With an addition on top of that, you're losing land to absorb that water and it's all going to get dumped on that...

Simon: But by removing the tree you're going to create more drainage which is going to allow it to take, I put a 6" pipe in there.

Muzzi: You will miss that tree trust me as far as the amount of water it soaks up. Is there any other discussion on that from anybody? Anybody have any concerns about any physical or environmental affects?

Machelor: I don't think the tree is part of our discussion.

Muzzi: It's not. Lastly whether the alleged difficulty was self-created?

Conti: Yes.

Muzzi: Unfortunately it definitely is.

Simon: Can I ask question? The house was there before. I didn't put the house there. How is the variance created?

Muzzi: You are creating, you want to create the addition, you're making your own hardship. If there was something to the lay of the land, if you were on a hill, things like that are not hardships because it's been there and part of the property. You wanting to have an addition is creating a hardship on to itself.

Simon: I understand what you're saying but when I was at the meeting last month Dominic Massaro came here and got a variance that he self-created. He wanted a variance to move his building to reduce the lot setback.

Muzzi: You may be very correct in that. Hardship is not a reason unto itself that we would deny you. We have to vet you through all those questions that I just went through. Having the hardship we would then weigh whether that hardship, if the benefit to the applicant outweighed that hardship. The significance and amount of the setback you're asking for I believe in my opinion is insurmountable because of the amount that's required for you to do what you need to do. I'm one person. Do we need to have discussion? You had the public hearing last month? You opened and closed it?

Conti: Yes.

Muzzi: We are not required to open and close a public hearing again once it's closed.

Parisi: It's been closed.

Muzzi: We can have more discussion. Does anybody want to make a motion?

**A motion to deny the variance request based upon the evidence has been shown to us and it does bear out the codification of the law and it does actually pursuant to our discussions that we've already done, there is no, it would be a detriment based upon the fact that of the substantiality of greater than 50% is against what the codification of the law has already been set forth was made by Heuck, seconded by Balassone and carried. Heuck Aye, Conti Aye, Muzzi Aye, Machelor Aye, Balassone Aye**

Muzzi: Have a good day.

The next item on the agenda was a request from Gregory & Alison Spagnolo, 4005 Dickersonville Road, SBL# 76.00-1-1 for a variance from Section 360-185E, Accessory uses and structures, from the maximum height limit of 18' to 20' to allow construction of a 36'x48' pole barn. The property is presently zoned RR, rural residential.

Muzzi: Welcome, tell us about your project.

Greg Spagnolo: We just bought the house, it's been vacant for a while so we bought it to renovate it and make it our home. We had to tear down a 5 car garage that was there. It was dilapidated and falling in on itself. The property has been vacant for a couple of years. We want to replace it with a large pole barn 36'x48' pole barn. I wanted it to be 14' walls. In doing so with a 4/12 pitch roof it puts the total structure at 20'. As I was doing my homework and getting my plans together I found that the height is at 18'. I really didn't want to make the structure smaller. There was several ways I could go about it but I feel it doesn't give me as good of use of the land

doing that. I could make the building larger but shorter taking up more foot print and I really didn't want to do that. Inside the barn I was looking to build a loft which is why I wanted the 14' height. I would like to use this barn as a workshop and a hobby shop, storage, a giant garage. In doing so I wanted to have some storage up top along with a little hobby area. I do models, my wife likes to sew and things like that. If I'm doing wood work down below I want to try and keep as much dust away from everything as I can. I also plan on putting in a dust filtration system. If I can put that above the loft it would also insulate that and keep some of the noise out.

Muzzi: Just out of curiosity what type of wood work do you do?

Spagnolo: I tinker around. I'm in the City of Niagara Falls right now. We're moving from there and I have a garage from me to you. I don't have much room to have the tools I would like. I've made some furniture but I would like to expand what I'm able to do.

Muzzi: We did get your packet. Is your roof is it going to be a metal roof or asphalt roof?

Spagnolo: It will be a metal roof. If I wasn't able to go to the 20'. One of the only options I had was a 3/12 pitch which I really prefer not to do as the roof itself isn't going to last as long. One thing I also forgot to mention in the packet that I was considering doing in the future is we would like to put solar panels on it. If it's a smaller pitch it means in the summer it's not going to have any bearing. In the winter the snow is going to sit on that longer and not produce electricity that's hard to clean off the snow.

Machelor: It is a metal roof though.

Spagnolo: The snow will slide but the panel itself....

Heuck: The panel can be adjusted.

Muzzi: It is my understanding and correct me if I'm wrong but with a metal roof how, I know the asphalt roof you would definitely get that deterioration but how are they explaining that to you that you would have deterioration with the 3/12 pitch?

Spagnolo: The only thing that's been explained to me is the longer it sits, it's flatter so there's not as much run off and eventually the screws and everything with the water.

Heuck: That's only about a 4 degree difference between 3/12 and 4/12.

Spagnolo: It's not a huge difference. Even the Building Inspector recommended to me that he would prefer a 4/12. It's what the specs called for and that's what I would like to do to get the maximum height.

Muzzi: I guess I have to bring up the dreaded this is pretty substantial 2' on the height. Normally we wouldn't see that and we've had lesser amounts that have not gone through. I always try to ask people do you have a backup plan or do you have, I noticed in your letter you mentioned a 19' roof.

Spagnolo: Well that wouldn't work anyway. I would have to obviously have the 18'. I forget what the exact specs were. I would have to go to 12' for a 12 but then I would lose the loft inside. By adding those 2' I get a lot more space inside that barn without taking a bigger foot print on the land.

Muzzi: Just to be clear for the record in your letter you made mention of a 19' high with a 3/12 pitch. Are you rescinding that?

Spagnolo: Yes, even going to 19' .....it was in my actual letter correct?

Muzzi: Yes, shall I read it to you? It is possible we can make the barn 19' high and use a 3/12 pitch roof but it causes the snow to accumulate on the roof easier and does not allow much water run off as it begins to melt. I feel as though it is an option but not a viable option as it will lead to premature roof failure.

Spagnolo: As far as the 3/12 pitch again, that's just what I've been told from, I talked to the Building Inspector here and my builder who is putting up the barn for me. He recommended against it. It doesn't mean it can't be done obviously I'm sure it's been done. I would like to get the maximum length.

Balassone: Is it necessary to have the walls 14' high?

Spagnolo: I think to build a loft inside the barn to make it usable yes. Anything smaller than that I don't think is viable.

Muzzi: Your loft from floor to roof is 14'?

Balassone: Just the walls.

Spagnolo: The loft inside is 7.5'.

Machelor: Your loft would be like a dormer, in other words you would have a wall in your loft and a pitch.

Spagnolo: No it's a flat roof inside so I wouldn't have that pitch. It's a flat ceiling.

Machelor: If you stood on your loft and you were at 8' in the wall, then it would be a 6' loft and still quite wide so you would have a lot of room up there.

Balassone: Is the roof going to start at the height of the 14' wall?

Spagnolo: It will end at the 14' and because of the 4/12 pitch it puts it at 20'.

Balassone: You are having a gable roof then?

Spagnolo: Yes.

Balassone: Why not have a barn style roof, it would give you more room?

Spagnolo: It's a big additional cost to do it that way.

Machelor: That would solve the problem. You could have 18' and what you want.

Balassone: I don't know what the cost difference would be but it certainly would give you a lot more head room up there.

Muzzi: The picture you gave us of the red, this is something you are considering? What is it an example of?

Spagnolo: Do you see how the roof line comes straight off, what I want to do is drop the roof as in the other picture. I thought it looked nicer and we will be staring at it out our back yard. I thought it would be a lot more appealing to the eye. In order to do that at a 12' roof we wouldn't have that drop to install a roof that way.

Machelor: We don't like to make suggestions on architectural things but I think what we are saying is if you look at it from a different angle you could put 18' with a different way of constructing the roof and have everything you want and we wouldn't be here giving you a variance for it.

Spagnolo: Unfortunately I took out a construction loan and I've already taken the loan out. I can't take out any more money for it. I can't add more to it.

Muzzi: Is there any more questions before we go through it?

Balassone: If you stayed at a 4/12 pitch, starting at the top of the wall from the ground, if that wall was 12' versus 14' you would still have the same amount of roof in the attic area. You would only have less room on the ground floor.

Spagnolo: I don't have any space in the attic area. It's a flat ceiling inside. If I have 14' walls I only.....

Balassone: What do you want a 4/12 pitch for, for more room upstairs?

Machelor: He thinks he needs it for the snow.

Balassone: I also heard him say he wanted more room on the second level.

Spagnolo: I'm just building that loft so I have workable space underneath and above.

Muzzi: So just to clarify the 3/12 to 4/12 is just for the snow.

Spagnolo: Essentially yes. I have some pictures to show you where on my property where we want to put the barn.

Muzzi: Sure you can show us.

(looking at pictures)

Spagnolo: This is the garage we had to tear down. You won't really see it from the road or any of the neighbor's houses.

Conti: How far back does your lot go?

Spagnolo: Its 2,200' deep, 15 acres.

Conti: 313' wide I believe.

Spagnolo: We looked at this house a few years ago; this barn is 40'x60' with 16' walls which I know was built prior to the code. I also have other pictures all within this eighth mile area.

Muzzi: It really helps as far as changing the character of the neighborhood.

Spagnolo: I took multiple pictures of other pole barns in the area that were right on the road. I took some picture of our residence and where it's going to go. It will go beyond what you can see there because of the tree line. It will be offset behind the house.

Machelor: You're assuming it costs more for a barn type metal roof than it does for a regular metal roof.

Spagnolo: The roof itself is not more; it's the construction of the actual structure that's costing more.

Machelor: I don't see why that would make any difference. You could put that roof on a 14' building....

Conti: I think what he's saying is he can't afford, the style is much more expensive to build than that type of a style. That is what he's saying is he can't afford.

Machelor: We don't know if that's true. It's just a guess. What is the significance of these pictures?

Muzzi: Those are like barns in the area. Are you suggesting they are all 20' high?

Spagnolo: Essentially they seem like they have 14' walls. I didn't walk up to their property and use a tape measure but just judging by standing near them. The one you can see has a flatter roof and that is what I'm trying to avoid.

Muzzi: We always like to talk options and give you suggestions especially when we significance in one area or another. The 2' significance is substantial. That is why I was trying to see if 19' was doable, what is your back up plan so to speak?

Spagnolo: Honestly my back up plan is I won't build it the way I want. I'm not going to get what I want out of it. Especially the one across the street is easily 25'. You think it's substantial. I'm still much lower than them. I understand it's before the building code. I don't think it's as substantial and it's so far back off the road no one will be able to see it other than me.

Muzzi: That's a bonus in the other column as far as does it change the character of the neighborhood.

Spagnolo: If anything everything we're doing to the house should make the area look better. It's pretty over grown.

Muzzi: I would ask the Board if you believe that the benefit sought by the applicant can be achieved by another feasible means and that would be the height variance from 18' to 20' to create the 4/12 pitch?

Machelor: I don't think the pitch is important in this case. I don't think it makes any difference because of the type of roof you are going to have. I don't think that pitch will make any difference about the snow load or any other thing.

Heuck: It's a 4 degree difference basically.

Spagnolo: Even if I go to a 3/12 I can't have a 14' wall. It still wouldn't give me 14' walls.

Conti: If you go to the 3/12 what would that give you wall wise?

Spagnolo: If I do 3/12 pitch I could go to 13' walls at 19'. I would still need a 1' variance at that point. Either way I would need a variance in height. To get the 14' with a 3/12 I wouldn't do it.

Heuck: If you went with 12' walls with a 4/12 pitch.....that would give you in the box inside for your loft at least 6.5', if you were to go only 7.5' up for your ceiling for your garage.

Spagnolo: Not really because by the time you do the framing and everything....

Heuck: You're still going to have.....

Conti: You're saying if you go to the 3/12 pitch versus the 4/12 you still can't do the 14' walls that you want?

Spagnolo: Correct.

Conti: You need the variance for the pitch for the roof and the size of the walls?

Spagnolo: Yes.

Conti: If it was a 3/12 pitch what would it bring the peak of the building to?

Spagnolo: It would be 18.5' tall. So I would need a 6" variance at that point, keeping the walls at 14'.

Muzzi: I would be okay with that.

Conti: The 4 degree difference I think especially with a metal roof, the snow is going to come off pretty easy. If it was a shingled roof there would be other concerns. You would be looking at a 6" variance at that point if all the math is correct. That wouldn't be as substantial, it would be something that we could probably work through and it would still give you the 14' walls.

Spagnolo: Can I ask a question? What is substantial? What do you consider substantial?

Muzzi: There is not a chart if that's what you're asking. It goes by, it's the overall project. Substantial is a relative term. Everybody has to work through it. If you had a 6' fence and you wanted an 8' fence, that 2' would be substantial because it would be a third of what the fence is.

Spagnolo: This would be a lot smaller percentage.

Muzzi: Correct, it is but it's not that easy.

Parisi: How far is the building from the roadway?

Spagnolo: It would be between 150'-200' from the road. I don't have the exact site plan. My house is roughly 130' to the back of my house and it will be on the back of my house.

Parisi: Your house is between the road and the garage you're building?

Spagnolo: Yes.

Parisi: How close are the neighboring properties?

Spagnolo: The one property is probably 200' and the other property is probably 100 yards.

Parisi: The closest you would be to looking at this 2' above the allowable level would be from 150' away at the front of your property or 200' at one of the sides.

Spagnolo: From the side you can't see it because of the tree lines on either side. There are tree lines on both sides of the property.

Balassone: So you're telling me you're willing to go a 3/12 pitch?

Spagnolo: I'd really rather not. I would rather stick with the 4/12. That's what my builder tells me. I'm not the builder. I'm just going by what my builder is telling me and I trust him. He said I would get better strength out of it and longer roof life. That's what I would prefer to do really.

Machelor: I really don't think that the 2' you're asking for is substantial enough to deny it.

**A motion to approve the variance request for a 20' garage as is was made by Machelor, seconded by Conti and carried....on the basis it's almost 300' back and woods on both sides. It won't be seen from the street or sides, motion carried.**

**Heuck Opposed, Conti Aye, Muzzi Opposed, Machelor Aye, Balassone Aye**

Spagnolo: Thank you.

Muzzi: You're very welcome. Have a good day.

The next item on the agenda was a request from Robert Jackel, 5960 Riverview Ave., SBL# 130.06-1-17, for a variance from Section 360-38, Yards required, from 40' to 29'.2" to allow construction of a 28'.9"x25'.4" addition. The property is presently zoned R-1, one family residential.

Jackel: I'm looking for a single story addition on to my house. When I first purchased my house, it was a house and then a pole barn. I'm basically looking to connect the 2. I'm looking to keep the front of the house flush with the addition. My property is surrounded by 3 roads. That's one of the reasons. I can show you a picture.

(Looking at the map)

Jackel: The house is offset over here and the pole barn is over on this side. When I extend the house with the addition it's going to encroach on that northeast corner. That's where I need the variance. It's not for the whole addition. It's just for the corner.

Muzzi: Is the alley.....

Jackel: It's on the other side. The alley way is on the opposite side of my house.

Machelor: Does this represent the setbacks?

Jackel: This setback, originally it was 35' and they changed it. Now it's a 40' setback.

Machelor: So when it was built it was in compliance?

Jackel: This right here isn't built yet. This is the existing house and this is the existing pole barn. This is the part I'm looking to put on.

Conti: That little diamond plat there.

Jackel: Where the addition is has no effect because I'm not going all the way over to the pole barn. It's just a little hall way to get in to the pole barn.

Balassone: A breezeway.

Jackel: Correct. They changed the zoning at some point and now its 40'.

Machelor: So at one point you would have been okay?

Conti: He still would have needed a variance. Just this little piece here. The rest is all in.

Muzzi: Are there any characteristics about the property that we should know about or is it pretty flat?

Jackel: It's pretty flat.

Muzzi: The drainage?

Jackel: It's fine.

Muzzi: Whether the benefits sought by the applicant can be achieved by another feasible means? Personally I don't believe so because you're kind of locked in with the existing garage and the home. Would anybody have any comment on that?

Heuck: You probably could but you know what it would reduce his footprint that he wants to achieve with the addition. It would be cutting corners for what he wants to achieve and also aesthetically it wouldn't be very pleasing to the eye for sure.

Muzzi: Whether the area variance would produce an undesirable change to the character of the neighborhood. Is there a comment on that?

Heuck: The original developer really got away with one. Let me put it that way with planning purposes.

Muzzi: Whether the variance is substantial?

Conti: For what he's looking for I don't think so.

Muzzi: I don't believe so either; it's less than 28%. Whether the variance can have an adverse physical or environmental effect on the neighborhood.

Conti: I would say no.

Machelor: No drainage problems.

Muzzi: Whether or not the alleged difficulty is self-created. That's a big yes.

Machelor: Only partially because under the old.....it would have been okay.

Muzzi: The benefit to the applicant outweighs the hardship it's created in this case. Is there any other comment?

Public hearing closed.

**A motion to approve the variance request was made by Heuck, seconded by Machelor and carried. Heuck Aye, Conti Aye, Muzzi Aye, Machelor Aye, Balassone Aye**

Jackel: Thank you.

Muzzi: Thank you for serving our Country.

Muzzi: We have to re-open the Spagnolo piece of business and we need to vote on SEQRA. I'm assuming we have to appoint ourselves Lead Agent on SEQRA?

Parisi: I think, yes you do.

**A motion that the Zoning Board act as Lead Agent for the Spagnolo variance request was made Muzzi, seconded by Conti and carried.**

**A motion for a negative declaration on Gregory Spagnolo's application for the pole barn under SEQRA was made by Muzzi, seconded by Machelor and carried. Heuck Aye, Conti Aye, Muzzi Aye, Machelor Aye, Balassone Aye**

Muzzi: We have to have a little bit of a meeting here. I would like to welcome Gary back. We are glad he's back and healing. I would like to have Joe speak a little bit about his training. I need to find out from you (Ryan Parisi) if you could clarify for us because we have members here that are on other Boards and I just want to make sure because I know there was questions, I believe when you guys all restructured last year that if one of us is on another Board and we hear the piece of business we have to abstain from the vote here. Is that still the way it is?

Parisi: Yes, I would recommend that you abstain from voting on things that you're voting as a separate Board.

Muzzi: If that falls through the cracks what do we do?

Parisi: If someone votes on something....

Conti: I was on the SEQRA Board for the County and I voted on this and now all of a sudden it comes in front of us and I vote again on it. This is hypothetical; I'm not on the Board.....

Bax: I would say if it impacted the decision, if you were the swing vote then you would call it before the Board again and have an alternate stand in.

Muzzi: We have had it fall through the cracks sometimes.

Heuck: Even if it wasn't on the swing vote and during discussion if he were to persuade other people.....

Parisi: The court may actually look to that, if there was discussion, did he sway votes, and I would have to research this issue more specifically.

Muzzi: The way Brian rolled it, I think it was you, Joe and Brian, Brian told me that person should physically get up from here and go sit down so there's no part in the discussion or anything. Just so we are all on the same page.

Parisi: I will make a note of this. I would have to research exactly where that court draws that line in the event that we have a situation where that happens.

Bax: What other Boards does somebody sit on?

Machelor: I'm on the Niagara County Planning Board

Balassone: I'm on the Environmental Commission.

Bax: The easiest way to address it is to be cognizant of your conflicts and excuse yourself when those issues come to a vote. I'm not sure what your procedures are if your alternate would step in so you have a 5 person panel.

Muzzi: We could.

Bax: That is how I would handle it.

Muzzi: Usually Marge is here and Pat shows up sometimes too.

Parisi: I would have to research how the courts would view that in those types of situations.

Bax: Think about it this way, the likelihood of you finding it and then self-reporting and adjudicating the consequences....let's assume one of you was on another Board, had knowledge of it and did vote, first of all it would have to come to the rest of the Boards knowledge.

Muzzi: Some of them you can figure out.

Bax: Once you know about it, does it nullify the decision that was made is the next question and I would imagine if it does what is the remedy.

Muzzi: In either case it wouldn't have because it was the majority vote.

Bax: It seems like a law school question. It's not a very practical scenario. I don't think it would get to that point frankly because you would be able to excuse yourself because I have been in contact with this.

Machelor: Does it make any difference that the other Boards are recommendation Boards?

Parisi: I think it may because it doesn't have a binding affect.

Machelor: At the County level we recommend at the Town level all the time and they don't listen.

Parisi: They don't but you know what the Planning Board it does have an effect because if you vote it down at the County level then we need a super majority at the Town level. Even though it's a recommendation it does create procedural hurdles or changes down here.

Bax: In order for a court to consider it you would need somebody to sue.

Parisi: I think what Al is getting at is a long series of things would have to happen in order for it to ever be known and then get to court and be challenged and over turned. You would have to have a really significant series of things and it would be exceedingly rare that it happens.

Muzzi: We should be mindful of it. Just to update everybody, I gave Ryan a sheet of all the Towns and it's the sheet I use before budget time of who is making what and who is being paid a certain way by voucher or whatever. He is going to finish his research on it that we talked about back in February and let everybody know. I gave that to him today.

Parisi: Obviously I don't make decisions but I will bring the issue.....

Muzzi: Or do we have to find out too from the homeowner?

Parisi: In terms of that stuff I thought I already had your answers; you will be covered under Worker's Comp.....as a town officer you would be covered under our town insurance in the event that something happened. We have to indemnify you as a town officer so if something were to happen under the law. In terms of Worker's Comp it would.....fact specific and Worker's Comp and attorneys would handle that. I can't take a position on that.

Muzzi: As long as we know if we are covered for whatever or if we have to get additional. I'm sorry I interrupted you Joe.

Conti: The conference that I went to at the end of April really opened a huge door; it shed a lot of light on the whole zoning process, planning and everything. Everybody needs to go to that and to refresher ones along the way. Our attorneys should go, there were numerous attorneys there. I was there with Tim. It really brought to light a lot of what is going on within the zoning laws and where we stand and what kind of power we have and how it affects how our Town is. We left an empty seat there because nobody from planning was going and we were denied to have somebody else from the zoning take that seat. It's very unfortunate because they really could have benefitted. If I hadn't gone to that conference I would have struggled with that meeting last month because Anita was gone and Gary was gone. With that meeting behind me it made a world of difference.

Muzzi: Have you ever been to that?

Bax: I have not.

Muzzi: The Planned Federation. You should try to go. It's not like the Town one you go to in New York. It's comprehensive, it's targeted and it's one right after the other for 3 days. When I went I came back and I was like oh my gosh it all comes together. I guess we need your help to get more people to go. Some Town's their whole board goes. At least a couple a year. But to wait 5 years to go then things get out dated. To hear what other people are going through and how they are handling the situations. Air B&B's are huge things now. It's not just the air B&B's, there are tent Air B&B's. People are putting tents up in their back yards and a good one has an out-house with it.

VanUden: We caught one last year. The people were renting out their motor home.

Conti: It's really a huge thing that is coming up and the Town needs to get a hold of this and set some laws and parameters on them because it's only going to get worse. The Air B&B has to have a law that the Town needs to start to look at.

VanUden: It's not a permitted use. When you look under permitted uses you don't see an Air B&B. The guy from Fuller signed up to get one and he was denied by the Zoning Board.

The next meeting will be by July 12, 2018, at 6:00 P.M.

**A motion to adjourn was made by Conti, seconded by Heuck and carried.**

Respectfully submitted,

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Sandra L. VanUden  
Zoning Secretary

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Anita Muzzi  
Zoning Chairwoman

