

## ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York  
Thursday – March 8, 2018  
ZB 2018-3

Present: Balassone, Conti, Heuck, Machelor, Muzzi

Presiding: Anita Muzzi, Chairwoman

Muzzi: Before we open our meeting tonight I would like to give you a flow of what our meetings are like in case someone has never been here before. Tonight we have 2 area variances before us. Area variances are a dimensional change that someone is asking for. It's our job unlike other Boards in the Town to vet these requests through the laws and the guidelines that are spelled out. We will do that. We will ask questions. It's really important if you are up speaking that you direct all your comments to the Board. There should be no discussion between individuals or with our attorney unless you are asked. We may or may not make decisions on the same night that you come. It just depends if we have all the information or if we have to seek other information. Tonight because we have quite a few people we ask that you limit your comments to 3 minutes each. Again, you will want to direct your comments to the Board. We are going to wait a few minutes until 7:00 and then we will start.

Pledge of Allegiance

Muzzi: Welcome to the Zoning Board meeting.

**A motion to approve the meeting minutes of February 2018 was made by Conti, seconded by Machelor and carried.**

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

The first item on the agenda was a request from Kermit Kelsch, 5140 Townline Road, for an area variance from Section 360-53 D, from the required 125' frontage to 66' to allow for construction of a residence. The property is located on the east side of Bridgeman Road, SBL# 104.04-1-52 and is zoned RR, rural residential.

Muzzi: Is Mr. or Mrs. Kelsch here? Can you give us your address please?

Kermit Kelsch, 5140 Townline Road. This property is on Bridgeman Road that we're talking about. It's a right-of-way that was in there when I bought the property. It's just a matter of putting a driveway in. We have to get that easement changed to have a driveway or whatever. We just want to put a driveway in instead of holding that as an easement. I don't understand because when I bought the property the easement was with it.

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Muzzi: You are calling it an easement. Are there utilities under that?

Kelsch: No.

Muzzi: I just want to look at the survey. The survey does not show it as an easement. Is that terminology that you are using or are you under the impression that is an actual easement for the Town?

Kelsch: There is a person that wants to buy the property. There is 4.4 acres there. The Town told us we had to get that changed, I call it an easement.

Muzzi: A right-of-way.

Kelsch: I think it was a roadway. That has to be changed.

Muzzi: When you bought it originally it was for farming? The road was just your access for your farm equipment?

Kelsch: I never farmed it; I rented the land to another farmer. That was used to come in and off the road.

Balassone: That farmer used it for access to the property?

Kelsch: Sometimes. He could get out the other end too. There is other property attached. Somebody wants to buy it. Mr. & Mrs. Neubauer. They approached us about purchasing it so we decided yes and that's the next thing we have to do is get that changed that variance.....

Muzzi: Are you in an Ag district there?

Kelsch: I don't think as such.

VanUden: He is. Rural residential but he's in an Ag district.

Machelor: Were those 2 residential properties that are on Bridgeman Road there when you bought the property?

Kelsch: Yes.

Machelor: There were homes there already?

Kelsch: Yes.

Muzzi: So you have a contract right now for the purchase?

Kelsch: Yes.

Machelor: Do you understand why the difference between the 66' and the 125'? The 125' represents the frontage for residential properties. Whoever cut this cut it in such a way that the property on Bridgeman Road can't be used for a residence. One of the things you have to look at is if you sold it to somebody for a residential property they would have to.....they would have to come here and say we would like a lot that's only 66' wide, not 125' wide as required by the code. That's the issue.

Kelsch: They just can't build on....

Balassone: Is their perspective that the house be built on the acreage or the 66'?

Kelsch: No, not on the 66'.

Balassone: That's strictly for access to the back land where the house will be built. There is no house being built on the 66'?

Machelor: No, but that's the frontage. His frontage of his lot will be 66'.

Balassone: But all the side lot restrictions are going to be where the house is at.

Machelor: It's the frontage. That's the reason the code is written that way so that people can't have that.

Balassone: I understand that but if the house was going to be built there I could understand that.

Muzzi: How far back is the plan for the house to be off the road?

Neubauer: It looks like the access goes approximately 185' back from the road and then we're thinking approximately another 225' on top of the 185'.

Muzzi: You know what is before us tonight has nothing to do with the house or construction of a house. What is before us is the relief of the frontage from the 66' to the 125'. I would just caution everybody on that. As far as the house goes, the house is not before us.

Kelsch: His taxes would be on the frontage of that property.

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Muzzi: Yes. We are charged with basically having to vet what you are requesting through the guidelines that the State sets up for us. One of those criteria is substantiality. Is this request substantial? You want relief of 59' from the code. That's just a little shy of half of what's currently there. I would point that out to you. Another thing we have to look at is if the hardship is self-created. You said when you purchased the land it did have that and you had the 2 neighbors on either side. Is there anything else you would like to tell us about the project?

Kelsch: Not that I can think of.

Neubauer: The only thing I would like to mention is we have looked at different homes in the area that are being built. There is a home at 2068 Swann Road....

Muzzi: We are going to open the public hearing so you can come up. I need your name and your address.

Scott Neubauer, 452 Woodward Ave., North Tonawanda. We were looking at other properties that are being built. At 2068 Swann Road, from what I've seen it looks like the same circumstance. Is that something that can be looked in to?

Muzzi: When we look at precedent I guess is what you are alluding to, every case is based on its own merit. Every situation is different. For something to have precedent it has to be so incredibly alike that there's really not a differentiation. So even having their own footage or something like that could be different. When we look at like properties or like things around you like you're attesting to here we have to look at the neighborhood, basically your neighbors. We look at things like that. To ask you a question now in that area where you want to build, do you find this circumstance anywhere?

Neubauer: I'm not sure because I haven't been able to see the frontage on this. I believe it opens up once it gets past the existing home that's there. As far as the actual dimensions I don't know.

Muzzi: Does anyone else want to speak? Please give us your name and your address.

Robert Hanel, 5083 Bridgeman Road: There is another house to the right of us. He wants to run the road in right in-between our house and the lady's house. An alleged driveway which to me they're asking for 66' is the same size as a road. It sounds more like a street than a driveway.

Muzzi: That is what is there currently.

Hanel: That's quite a coincidence isn't it?

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Muzzi: My understanding and maybe our attorney would like to....common place with farms, normally they would have that. Is that accurate?

Parisi: I'm sure when this piece of property was originally divided they kept that 66' in contemplation that a neighborhood might be built back there because you need 66' to put in a road and dedicate it to the highway with deed requirements for State Law for the width of roads. I'm sure when this parcel was split that was the contemplation for a neighborhood and not actually a single family home.

Hanel: We are totally opposed to it and so is the neighbor to the right of us. She is unable to show up because of her age. I have 2 letters written that I will hand to the Board. We bought our house and built our deck back there to be private and look at the wildlife not to look at somebody's house.

Muzzi: The house is not before us. I would just caution you on that.

Hanel: Down the road what else is he going to put up there besides a house? I don't know what you're going to do. What else a pole barn?

Neubauer: We will put up a garage

Hanel: That's wonderful. Just what I want to look at. Then what's the next thing are you going to switch it over to commercial and then put a business in there?

Muzzi: Just to be clear you are to the right or left?

Hanel: I'm to the left.

Muzzi: You've lived there how long?

Hanel: 28 years.

Muzzi: So when you bought it, it was farm land like it is now.

Hanel: I wish Mr. Kelsch would have let me know he was selling the property because I would have loved to have bought it off him. I didn't know anything about this until we got a letter in the mail last Saturday. He was all secretive. I would have loved to have bought the property off you. I don't know why you didn't ask me to buy it? Can I ask why?

Kelsch: I don't want to get in to it.

Muzzi: Sir, you have to address the Board when you speak. Is there anything else that we should know?

Hanel: I have the 2 letters here from the people on the other side that are opposed to it. The flooding is really bad in our back yard. It's going to get worse if you put a road in there.

Muzzi: For the record the Board has received a letter from Janet McKay and Sue Lamare. To Whom It May Concern: I am opposed to this petition Section 360-53D. I have lived here sixty years and I really don't want this to happen. I have great grandchildren that are here often and would not be good for them. Janet McKay, 5097 Bridgeman Road.

To Whom It May Concern: I am very opposed to this petition Section 360-53D on 5097 Bridgeman Road. I have lived here for 30 years. My mom for 60 years. We do not want all this noise and everything else. I have grand kids and she has great kids. I don't want to look at my back yard and see all this going on. I only want to see my grandkids playing only! We want it to be peaceful like it always has and keep seeing deer and all other animals, not other things. It would be too noisy. Sue Lamare, Janet McKay's daughter.

Muzzi: Is there any other comments on the frontage variance?

Hanel: Did you look in to the SEQR act through the environmental conservation?

Muzzi: SEQR is not before us.

Hanel: What about down the road on that wetland delineation? There is a lot of water.

Muzzi: Again, that is not before us. What the Zoning Board does is give relief of certain sections. The section they are here tonight for and only for is the frontage of the lot on the road. These other things would come up during the permit process.

Hanel: Like I said my wife and I put a lot of money in our house and we don't want to look at somebody else's house. You go from the front porch is like looking at the city and to the back yard is like looking in the country with the deer and everything else. We don't want no development back there at all. Thank you.

Muzzi: Thank you sir I appreciate it. Is there anyone else here to speak?

Rosemary Sullivan, 5094 Bridgeman Road. My husband and I have lived there for 30 years. We have been neighbors to the Kelsch's all of my life because I grew up on Townline Road. My husband and I bought a parcel from a farmer to build our home. We love living there. I would like another family to have that same opportunity. It's a beautiful neighborhood. It is a quiet

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road. There have been over 20 houses go up on Bridgeman since we built our home and it hasn't changed our quality of life. We understand when we bought our property that it was farm land behind us. We too have a right-of-way right next to us which full well known could be a road at some time and it be turned in to homes but that's what everybody wants. I have no opposition to having another home built.

Muzzi: How close are you to.....

Sullivan: Across the street.

Muzzi: You live right across the street?

Sullivan: The north end of my property is directly across the street from them.

Mark Gaynor, 2886 Upper Mountain Road: I'm also an adjacent property owner. If I may, I made 6 copies of an aerial photo of everything that we are talking about.

Muzzi: Are you George Stover's property?

Gaynor: Dennis Mills, Lori Mills is my sister and Mary Gaynor is the owner of the lot adjacent to it. I really just have 2 questions. You can see my pole barn, my work shed and my house up here. Then you see the trees narrowing down to a 60 some foot connection and then that big farmed area here, a little less than half of that is mine, this piece right here and then the other part is Mr. Kelsch's. The only concern I have because what people do and move in and who plants where. You see the little arrows I drew? That's the natural drainage from Mr. Kelsch's property and my property. What's happening is my property slants down, his orchard and his other stuff slants down and this green line at the bottom is like a drainage area and it drains right across that diagonal over and then down by Wayne River's area in to his pond. I think Wayne owns that big piece of property there. That drainage if they build back there they have to respect that drainage or we're both going to have some problems. It will make all of our property wet if they block that drainage that goes across the property. That is my concern there. The other concern is from what I understand there is a right-of-way across all the properties. It's a railroad right-of-way. It goes across both of our properties. I would love that not to be there but it's on the survey.

(Looking at the survey from Mr. Gaynor)

Parisi: I'm just not sure how relevant this is. That is concern for them when, whether .....this is not a concern for the ZBA. I don't see how it's relevant because they are asking for a variance on their lot line. If we grant it they can put it in. If they don't then we can't put it in there. They can't build a single family residence on it. It has nothing to do with the driveway so much as it has to do with if they want to build on a lot and they don't have the required frontage right

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now. What they are asking for is a variance on the required frontage so they can then put a driveway in.

Gaynor: The real question is if you look at coming off of Bridgeman there.....

Muzzi: We really want to keep this to the frontage only.

Gaynor: Right here, that's all your frontages.....if you go off the frontage from what I see and I've walked back there you have that water.....

Heuck: We're not discussing the drainage at all. I don't mean to cut you off.

Muzzi: We can't comment on it. It's not before us.

Gaynor: Those are my concerns.

Muzzi: Thank you.

Heuck: Ryan, can you bring up the Comprehensive Plan for the Town? In that Comprehensive Plan would be any developments that were proposed for that location and if it was an access road.

Parisi: I can check. Sandy do you know if it's on the website?

VanUden: I do not know.

Muzzi: Is there anyone else here that would like to speak on the frontage?

Dennis McLaughlin, 5082 Bridgeman Road: We bought our land back in 1999. We didn't build on it until 2003. We've been there since 2003. We are opposed to anything going back there too. We don't want anything. We don't want more traffic. We don't want anything like that back there.

Muzzi: How far are you from.....

McLaughlin: I live across the street from Mr. Hanel.

Muzzi: Thank you.

Leo Notaro, 5251 Bridgeman Road: I just had a couple of thoughts. I'm further down the road than some of these people. Bordering my property I have an access way to that land and right across the street from me is an access way to farm land as well. My concern is precedent and



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it's allowed. I just don't want to see this happening up and down the street because other access ways will be made in to roads. My concern would be this property when I look at it on a map and you go beyond the 66' strip and get to the back lands there it appears that somebody could subdivide if they wanted to afterwards. My concern would be one house is one thing and then what happens if it's granted and they decide to subdivide later on and that strip is used for that purpose then there will be issues like drainage and issues like negative impact on the property values and things like that. Those are my concerns.

Parisi: They could build a cul-de-sac right now with that 66' right-of-way without a variance. What I was trying to explain before is that 66' of right-of-way was put there in contemplation of a road being placed there. That's why you do 66' because 66' is the minimum for a New York State road way. They could actually go to the Planning Board and put a road way...

Balassone: You could do a cul-de-sac with other houses like a subdivision?

Parisi: Yes.

Balassone: You can't do that for a driveway for one house?

Parisi: What they're looking for is so yes you have to fulfill all the other requirements under our Code which would include the 125' of frontage but as long as you fulfill those under the code they could go to the Planning Board and it would be reviewed and they could build a subdivision back there yes. That 66' was probably contemplated as the road way in to get back to it.

Balassone: Why is it okay for the subdivision and not one house?

Parisi: When you subdivide they are smaller lots. You have to go by the frontage. It's kind of tough to explain but you have to go by the frontage. You can take a road in there and then you could 2 or however many you could fit on that frontage as long as you have 125' for each one. That's how it works. Those lots would be subdivided. They would be considered stand-alone lots you could build on as long as all the requirements of the code are met.

Muzzi: I just want to address something else that is in the application. There was comment made that the property is landlocked. That's not the case when you have an access road coming out. The property is not currently landlocked.

Kelsch: Right now it isn't no.

Muzzi: Just to clarify that.

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Kelsch: Let me just say if this wasn't granted and that stayed like that and nothing could happen then it would be landlocked.

Muzzi: No, landlocked gives you no access to a parcel. You have access to the parcel.

Kelsch: Okay, I understand.

Muzzi: Does anyone else have any questions or comments?

Don Grimmer, 5325 Bridgeman Road: I'm about a half mile down on the same side. My question is if we all have to have 125' frontage why would somebody else be able to not do it? We don't want developments. That road is crazy. I almost got killed last year. People go down there 70 miles an hour. We don't need any more traffic. We already have all the water trucks from the reservation coming down. I almost got killed last year with the stuff coming off the truck. I think most of us built out there for the privacy. The idea of having a cul-de-sac back there is very.....

Muzzi: That is a hypothetical.

Grimmer: But once you get that road back there, there's nothing to say you can't do it. Future generations. We built a house back there. I'm a veteran. I pay taxes, quite a bit of taxes. I know Mr. Gary here. I think we should really consider not doing that. If we all have to have 215' frontage you would be opening up a can of worms. Everybody should obey by the rules. It's only fair. People built out there for a reason. It's a nice neighborhood. It's expensive the taxes and people take care of their property. We do not want developments in that area. Once you start that you get sewers in, before you know it you have an apartment complexes and it ruins the neighborhood. I'm extremely opposed to it. I bet you if you took a show of hands it would be ¾ of these people here are totally against it.

Muzzi: You live down the road. Do you have 125' because I noticed most of the homes on there; most of them are 100' I think.

Grimmer: I have 200'. It was divided up in my family years ago. 66' is a road access to open up a can of worms for development and I think most people here would be extremely opposed to it. People don't build in the country to have something in your back yard to look at.

Muzzi: Anyone else for or against? Does the Board have any? Gary did you have concerns about a map?

Heuck: I was just wondering what the Comprehensive Plan of the Town really did state on that, only for the benefit of Mr. Kelsch. It behooves me not having that here to wonder.....

VanUden: I will go look.

Parisi: I couldn't find it on line.

Muzzi: We will close the public hearing now. Any other questions? Would anyone like to make a motion?

**A motion to deny the request was made by Machelor for the following reasons: It would cause an undesirable change in the neighborhood. The variance is substantial. It's almost as wide as the road. It would cause an unnecessary hardship on the neighbors to have a road between them. The property as it was originally purchased and sold by the original owner was deliberately made 66' wide to have access to the back. There is not enough in the back to justify to pretend this is 125'. There are other 66' right-of-ways in the Town where this same thing could happen again. It wasn't created by the owner but it's the problem that existed when he purchased it.**

Muzzi: Is there any other discussion on the motion?

**Motion seconded by Conti and carried.**

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

The next item on the agenda was a request from Ronald & Peggy Clarke, 1243 Ridge Road, SBL# 102.00-1-9.1 for a variance from Section 360-185 E, Accessory uses and structures for a previously approved variance of 18' to be 22'. They are now requesting a variance to 25', for construction of a 48'x152' pole barn. The property is presently zoned RR, rural residential.

My name is Michael Schweitzer, my wife Colleen Schweitzer, Ron & Peggy Clarke, my in-laws, all 3 of them own the property. I'm speaking on their behalf.

Muzzi: Do you have an agent letter from them?

Schweitzer: My father-in-law is right here, Ronald Clarke.

Muzzi: Ron can you come up too if you don't mind. Do you want to tell us about your project?

Schweitzer: Basically we're putting a pole barn in down there. We need the variance to be lifted for the ridge line to be 25' instead of the Town Code. I have to have a minimum 16' ceiling in there because of a grape vineyard harvester for my tractor. A pitch with a 12/4 doesn't allow me to have anything less so that's why I'm asking for the variance.

Muzzi: When you got your first variance did you not take that in to consideration?

Schweitzer: The building we were going to build was not as wide and because it wasn't as wide we didn't have to have the pitch of the roof as steep. Basically the wider you make it to keep the pitch of the roof the same you have to make it taller. We kind of got bumped back with everything and the more time I had to collect more stuff; the wiser it seemed to make a bigger building now than to have to add on later. Because we need the bigger building for all the stuff we accumulated we need the bigger roof line to accommodate all the equipment.

Muzzi: I guess I need some clarification because your paperwork talks about what you're talking about, equipment and things like that. However the SEQRA we have talks about a vineyard winery. Is this a little more than storage? Is this a full blown business going in?

Schweitzer: Eventually that is what we hope to have is a winery down there. As of right now the only thing that I'm seeking for and the building permit I believe is for just the housing of my tractors and everything like that. It's an agricultural property and the farm winery would be classified under agricultural as well. The actual winery part of it, the roof of that if you look at plans is significantly lower than the back portion. The only part that we're talking about is the back portion that exceeds that roof line limit that Lewiston has.

Heuck: Is that on the north side of the road?

Schweitzer: North side of Ridge Road.

Heuck: It will slope away from the road way?

Schweitzer: Correct. We're 75' down from the road. You'll never see it. There is no site path or anything like that. We're pretty well bumped up as much as we could be against it for that exact reason.

Muzzi: On the map that we have you have proposed building #1, proposed building #2 and then overhang. Am I to understand this is one big building or are you going to be adding on in the future?

Schweitzer: One big building. The overhang is a different height and the front part of the building is shorter as well. It's one long rectangle.

Conti: But the height variance you're looking at is just on building 2?

Schweitzer: I believe so yes.

Machelor: What is the height of building 1?

Schweitzer: I don't know off the top of my head. But I don't believe it exceeded the variance.

Machelor: It's important. How about the overhang?

Schweitzer: The overhang I think is 10'.

Machelor: Certainly less than 18'?

Schweitzer: Yes. I believe the only part of the variance I need is for the back. I don't know off the top of my head what the front was. I don't believe....I don't actually know what the Town limit is. I was told 25' was what I needed, because 25' is what the back is.

Machelor: Do you have plans for this building?

Schweitzer: Yes. You don't have a copy?

Machelor: We have an overhead.

(Looking at map)

Schweitzer: I believe I need 24' but they told me to ask 25' just in case there is a minor....I believe there is a 75' elevation change. We're not doing the whole winery right off the bat. We're looking for the agricultural building first. Then I still have to be vetted through New York State with the beverage and all that stuff.

Muzzi: This is all going up in one shot?

Schweitzer: Yes.

Muzzi: This is going to be parking? You're equipment is going where?

Schweitzer: In the back side. That's an overhang....

Machelor: He will bring his equipment in that way.

Muzzi: Is there anything else we need to know?

Schweitzer: Not unless you have other questions.

Muzzi: Is there anyone here that would like to comment for or against? Any questions?

We will close the public hearing.

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Muzzi: The first thing we are going to do is vote on our SEQRA so I would like to make a negative declaration on the SEQRA....

Parisi: Prior to the declaration you need to vote to be Lead Agency for purposes of SEQRA. It's a motion to Zoning Board of Appeals as Lead Agent for SEQRA.

**A motion that the Zoning Board of Appeals act as Lead Agent for the SEQRA in this project was made by Muzzi, seconded by Machelor and carried.**

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

**A motion for a negative declaration for the SEQRA was made by Muzzi, seconded by Heuck and carried.**

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

**A motion to approve the variance request for a height of 25' was made by Heuck, seconded by Conti and carried.**

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

Muzzi: Last month we discussed having some training come in and I was able to find a municipal attorney with agriculture back ground. We will be having a 2 hour training session. We will invite some surrounding townships. It probably won't be until fall. We will have at least a 2 hour training lined up; we will hopefully drag Ryan in for 2 hours.

Balassone: If we do this and can't find a second class are we obligated to.....

Muzzi: Then you have to go to NCCC. You can go on-line. You can go to NCCC for a couple.

The next meeting will be April 19, 2018, at 6:30 P.M.

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

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

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Respectfully submitted,

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Sandra L. VanUden  
Zoning Board Secretary

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Anita Muzzi  
Zoning Board Chairwoman