

ZONING BOARD OF APPEALS
Town of Lewiston 1375 Ridge Road
Lewiston, New York 14092
Thursday – October 10, 2024

Agenda- Lower River Road Oliver (A), Creek Road Page (B), Dickersonville Road Colbus (C)

Present: Conti, Heuck, Machelor, Warnick, Sandonato

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

A motion to approve the minutes of September 12, 2024 was made by Conti, seconded by Heuck and carried.

Machelor: Ok we have a motion made in the seconded to accept the minutes as written. All those in favor say AYE.

Members: AYE.

Machelor: Opposed? Hearing none.

Machelor: Ok with that I'd like to open the public hearing. Well first I am going to...

If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented. Ok with that we are going to open a public hearing for Christine Oliver 4181 Lower River Road SBL 73.14-2-2 requests a variance for a side yard set back from 15' to 10' to the north of a single-family residence. Is someone here to speak about this?

Conti: Let's just move her to the end of the agenda.

Machelor: Yeah, let's do that. So now are going to open the public hearing for James and Patricia Page 4323 Creek Road SBL 74.00-1-28. Is someone here. Would you come up to the microphone and state your name and address.

James Page: I live at 800 Thornwood Drive.

Machelor: And why are you here?

Page: I'm here to get a variance the height on the pole barn. I want to build a house and a pole barn at 4323 Creek Road which consists of 88 acres that I own.

Machelor: Ok.

Page: And I have pictures and drawings of everything that I want to do there. And what I am here for is to get your approval to go from 18' standard to 27'. And I have...

Conti: Sure, set it up.

Page: First of all, in 1984, this 2 and a half story house and this barn were right in the same location where I want to build my new house and my pole barn. And these are approximately 30 feet high both of them the house and the barn. Those have been torn down I've got the permits and everything from the Town of Lewiston where they

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tore it all down. This is in 1984 and I have everything here if you want to look at it. I can have one of my grandsons just bring it in front of you there.

Conti: No that's fine.

Machelor: If we have questions about that of it...

Conti: Because the codes have changed so much since 1984 it really doesn't matter what the codes were then.

Page: Ok so here's the next drawing here but anyways here's my house that I want to build. It's going to be 85-foot frontage 45 foot on one side and the other side there's a 3-car garage which will bring that to 85 feet on the other side.

Conti: You're talking about 85 feet from the side set back?

Page: No set back is 200 feet for the house.

Conti: But your saying 85 feet from the side yard?

Page: No, no this yard is 900 feet wide.

Machelor: I think he means his building is going to be this.

Conti: Your building is going to be 85 feet wide?

Page: The house will be 85 feet long and 45 feet deep on one side 85 on the other side because we have a 3-car garage.

Conti: Ok

Page: Onto the house. And then back 100 feet back to the partially behind and to the right a little bit will be a pole barn that is 60 by 100 and that is 300 feet from the street. Which there's a big tree in front of it where it's going it's going up in this corner here there's a big tree in front of that. But from the street you can't hardly see it at all. But this house is going to over tower that barn. Because this house is 31 feet high and it's going to set up out of the ground about 4 feet because I am having the front yard that's 4 feet higher and then the house will be set from that up so it will go about 34 feet high. Which is taller than the pole barn that's going to be 27 feet. And like I said we are dealing with 88 acres but I had a wet land study done on this already. They had zoned out 2 acres there to where I can build. We have the finishing touches with the Army Core of Engineers coming for their approval this month for that part of it. I've had a number of problems since I have been doing this. I had some people that are jealous or just doesn't like it things to happen and call the DEC on me calling the DOT it's just ridiculous but a fights a fight.

Conti: And you said that, that pole barn is going to be a 100 feet behind your house?

Page: It's going to be 100 feet behind my house 300 feet from the street.

Conti: Right. But in the paperwork, you said here the house that's being built from myself will be 250-foot setback the pole barn would be 500-foot setback behind the house.

Page: No.

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Conti: I am just reading your writing.

Page: I must have miswrote that. This is the true reading here.

Conti: So, its not... It's 100 foot from behind the house then.

Page: 100 foot behind the house and it's 300 feet from the street.

Sandonato: When you say a street do you mean Creek Road?

Page: Creek Road.

Sandonato: Ok.

Page: Yeah, because Creek Road is the front is in front of my house. I am going back 200 feet for the house and then another 100 feet for the pole barn and that's a total of 300 feet from the street.

Conti: Ok so it's not 250 either for the house.

Page: No, it will be 200. I went out there with a tape measure not I got a reel that I can run back and forth with. This here is actually where the wetlands study was done and this is all the good acreage here to use. I only had 25 acres checked because that's all I needed the rest of it I just want nature trails so I can walk through there have my grandkids hang out with me and that and that's the purpose with the pole barn. You know I have 3 grandsons well actually I have 5 but 3 are here and I am training them through life showing them how to do things mechanically and also showing them how to do carpentry and things like that. I am 70 years old I got a lot of traits and I want to hand them down to them. I don't want them to be out doing drugs and hooting and hollering and going to jail.

Machelor: That's good.

Page: I've really spent a lot of time with them I have been doing it right along but I wanted some place secluded for where we could all work together.

Machelor: Mr. Page to be honest what you're asking for is not very unusual you know for this. Because we've been seeing these height variations come in all the time now it's because of the new height of vehicles. The Town is in the process of adjusting the codes for heights. So, what you're asking for is not hard to approve regardless of all the other things as long as all the other stuff that's going on is going on but we do have one issue about it Joe, you want to mention that. No, the house.

Conti: Oh, primary residence. Obviously, you can't have an accessory structure in the Town of Lewiston on a piece of property without a primary structure.

Page: That's why I am building the house. I don't need a house I have a beautiful house I don't need one but I am going to do it. I am going to sacrifice my need to build a house and then later on I will sell that house. But I know you have to start the house at the same time.

Conti: Well, the concern of the board here is that fact that you could start and I talked to Tim, he said you could start the once it's approved you could start the pole barn at the same time you start the house but you not really use the pole barn until the house has a living occupancy.

Page: Right. That's fine. That's fine. I have the money to do both of these things.

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Talking

Conti: That's not here that's not for us. Question on this here it shows Saunders Settlement Road.

Page: What's that.

Conti: It shows James Page Saunders Settlement Road Town of Niagara.

Page: Right originally, I was going to build it there because I own a lot of properties all over Wheatfield Town of Niagara but I am 70 years old now I want to consolidate all my classic cars 14 of them all kinds of equipment I want to consolidate everything there because I am retired now my daughter runs my business now. All I want to do is get everything together so I can go walk from my house into my garage as wash my car in private. Or move on or have my grandkids do the same thing. You got to have everything together. Things are just too far apart too many things happening in different areas of the state that I just don't care for. I have a lot of time invested in this my vehicles.

Machelor: Ok.

Serianni: Can I jump in and ask a couple questions here.

Machelor: Yeah, this is a public hearing yep.

Serianni: So, umm you're asking for a variance from 18 feet that's what the code allows your asking to bump the pole barn height to 27 feet largely the reason for this has to do with your using it as storage could you give some explanation as to why you need the additional height to store what's in here.

Page: Sure. I will store once I get an approval I have right now I have a trailer with the air conditioning unit on it. That's why I have 14 foot over head doors. When you have a 14 foot over head door and you have a span of 16 feet you gotta have that pitch. The other thing is too again I am 70 years old I want to buy a motor home and I want to buy a big one and those are close to 13 feet high with the air units and everything on them and I want to put it inside if I am going to invest 200 225 300 thousand in a motor home I want to protect it, I want to protect my investment so when I am not using it I want under wraps. You now and the same thing with my inside I have 14 classic cars and these here are all immaculate cars I want to get the three stack and a two stack where to where you put them in and you could go up 3 high you have to have that ceiling clearance to do that. And the same thing with a regular lift you gotta have it too. You gotta have the clearance. I don't want to be fighting for the clearance or damaging a car by having a smaller pole barn a lower it just doesn't work out.

Serianni: And the property just for the record the property is zoned for rural residential. I just wanted to establish that.

Machelor: Is there anyone else in the audience that would like to address this issue? The board have any questions for Mr. Page?

Sandonato: This thing on Saunders Settlement Road is just...

Warnick: That was address things

Sandonato: Just a typo or just disregard this.

Warnick: From TNT it says Saunders Settlement.

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Page: That was...

Conti: That's where he was going to build it, he already said that.

Page: That was where I originally was going to build it if you look at the year on it, it's 2016.

Conti: Ok.

Page: I still own all that property but I'm hoping that Amazon buys it all because it's right in front of Amazon. I'm hoping for that.

Machelor: Ok.

Page: That's why that address is there.

Conti: So, the start of this pole barn will be 300 foot from the road.

Page: It will be 300 foot from the Creek Road.

Conti: That's where the start it will go back another 100 then.

Page: Yes.

Machelor: That will be part of the approval if we give you an approval. You know I know you only did it with a tape measure and all that but.

Page: Right.

Machelor: Yeah, then it will have to see it that it actually happened that way.

Page: Yep, not a problem.

Machelor: Because the 300 400 and 500 got kind of confusing.

Page: we went to talk to Tim Masters about it. It was a guesstimate I didn't have a reel we were playing around with a tape measure.

Machelor: Ok that's fine. Alright. Any questions Henry.

Sandonato: I'm sorry.

Machelor: Any questions.

Sandonato: No, I have no questions.

Conti: You can have a seat.

Machelor: Alright I am going to close the public hearing and ask the board.

Conti: A negative declaration.

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Machelor: Do we?

Serianni: Yes, you need... You don't need the negative declaration but you need to make a finding that the action is a type 2 in regards to the SEQRA.

Machelor: Ok. Who would like to make that motion?

Conti: I didn't hear what you said.

Machelor: He wants us to make a motion then declare it.

Serianni: Nope no motion just a finding.

Machelor: Ok.

Conti: A finding that's...

Machelor: A finding that it's a negative.

Serianni: A type 2

Conti: Type 2.

Machelor: Type 2.

Serianni: No Further environmental reviews.

Sandonato: So, you need someone to state that?

Serianni: It will be... Basically, its included in your...

Sandonato: Ok.

Conti: Are you asking... Did you close the meeting?

Machelor: Yeah.

Conti: Oh, you did.

Machelor: Yeah, we did.

Conti: Ok. I would like to make a motion then. Based on the board's discussion and the following considerations that it is a minimal of 300 feet from the road and that it is not build before the house, its built at the same time as the house and you can not occupy the pole barn until the house has a live in occupancy. Declaring the house. The Zoning Board of Appeals determines that the benefit of the variance out weighs and detriment to health safety and welfare of the community. That the variance request is minimum necessary and the variance be granted and that the finding of the type 2 deceleration no further action is needed.

Machelor: Ok we have a motion.

Heuck: Second

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Machelor: Ok we have motion second. Ok any discussion on the motion?

Sandonato: No

Machelor: Hearing none I will call the question. All those in favor say AYE.

Members: AYE

Machelor: Opposed? Lisa poll the board.

Wisnieski: Joseph Conti: AYE, Gary Heuck: AYE, Henry Sandonato: Aye, David Warnick, Norman Machelor: AYE.

Machelor: Its approved sir.

Page: Thank you!

Machelor: See Tim before all the stuff you need to do in the future.

Conti: The other condition we all get to have a ride in your cars take your cars for rides.

Laughing

Talking

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Machelor: Ok. Well final thing today is...

Conti: Well not the final thing but.

Machelor: Open the public hearing for variance request for Eran Colbus 4018 Dickersonville Road SBL 75.00-2-7.2. Yes Sir. Name and address.

Eran Colbus: 4018 Dickersonville in Lewiston.

Machelor: Ok.

Colbus: Recently we had a commercial entity move in next door to us. Which I brought some picture if you'd like to see some of their commercial offerings online. I brought enough copies for everybody. This is some of the equipment that they use. It is also accompanied by some debris here and there it is a abattoir a meat processing facility doing goats, chickens and eventually cattle.

Warnick: Go to the mic so we can get this on record.

Colbus: Yep.

Talking

Colbus: The commercial entity has brought a lot of activity to the back yard of our house which my wife and I have spent 20 years producing a quite Eden of completion and bee keeping and gardening. So, in the last couple of years, we have had a lot of parties next door, a lot of get togethers they have cultural get togethers where they process the animals and families turn out big bon fires, loud music nearly continuously 24 hour a day commercial activity of trucks pulling in dropping off things picking up things, workers and a lot of garbage blows over onto our property from their property. So, we were hoping to put up a fence taller than the usual 6-foot fence to block the majority of the commercial activity in their barn from our respective position of Eden. I sent originally with my application a picture showing where we would like some 6 foot up to a certain point blocking their residence.

Machelor: Come on up. This is it? Come on up.

Colbus: That is our property.

Machelor: This yours.

Colbus: Yep.

Machelor: And this is the fence.

Colbus: Yep. And from the front.

Machelor: And this is the slaughter.

Colbus: That is the slaughter house the property. So, the front of that yellow line.

Conti: Right.

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Colbus: We'd be going back a little more than 130 feet and then the rest to the end of yellow line would be the 10-foot fence.

Conti: 10 foot?

Colbus: 8 foot sorry I wanted 10 but I realized that's not possible.

Talking

Machelor: Alright say this again.

Conti: So, you don't...

Talking

Conti: What you have yellowed out.

Colbus: That will be a fence.

Conti: Right. And no fence here?

Colbus: There's no fence there. We're going to plant some arborvitae which are a lot easier and get taller so from the beginning of the yellow line about 100 feet back will be a 6-foot standard fence that will block the usual residences and then from the end of that to the back corner of the property will be 8 foot. And that would help block the noise the activity.

Machelor: Ok so look so 100 feet for 6.

Conti: So, 411 feet of 8 foot.

Talking

Colbus: 105 feet will be 6 foot standard and then from the 105 feet back which would be 327 feet we would like the 8-foot variance. 432 feet.

Talking

Conti: Subtract the...432 from 511 cause its 511 from here to here.

Machelor: Yeah.

Talking

Conti: So, it's less than 100 feet. This is less than 100 feet. There's no fence he's going to put arborvitae.

Heuck: He's going to put the arborvitae there. You know what they are? There plants.

Talking

Machelor: How many acres is your property?

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Colbus: 5 acres.

Machelor: 5 acres. Oh yeah, I see it. Ok.

Conti: How far back does his slaughter house, is it beyond is that why you want the 8 foot is that where the slaughter house starts?

Colbus: My property corner is about right in the middle of their enormous pole barn. Which was rebuilt to accommodate animal storage machinery of the processing not really sure what's in there but they doubled the size of the pole barn.

Conti: Ok.

Colbus: And the last I heard he intends to retire in a few years and double the size of the business.

Conti: Ok.

Colbus: So, one of our other questions is whether this type of business is appropriate in that zoning district and is this allowed on Dickersonville to be a retail establishment?

Conti: That's...

Colbus: Processing.

Conti: That's something you have to deal with Tim.

Colbus: I went there and they had no answers. He actually called other towns and asked what they would do with zoning questions I'm not sure what the zoning terms of that area is.

Conti: I don't know off the top hear.

Colbus: Ours is Rural residential theirs is rural residential or sorry single-family residence.

Conti: R1.

Colbus: The backyard had a different zoning classification that I could not find a definition for.

Machelor: Their backyard.

Colbus: Their back property.

Machelor: Not yours not your backyard.

Colbus: We are rural residential.

Machelor: Ok.

Serianni: That's a question for code enforcer building department.

Colbus: I went and spoke to what's the fellas name?

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Conti: Tim.

Colbus: Tim. He had no answers for me. I said could you look further and get back to me but I haven't heard from him in several weeks. He called other municipalities and asked what they would do with an abattoir and large-scale animal operation. Dropped in the middle of what was historically residential. And none of them have an answer.

Serianni: I would wager that it's still being investigated. But the zoning board doesn't have authority to enforce the code against any problems there all that they do is grant variances.

Colbus: So, continue going through Tim to find out what is allowed and whether in a historically residential neighborhood this type of operation is allowed.

Talking

Serianni: Yes. Code enforcement would have the authority to investigate and make a determination whether the use of that property is not in compliance with the zoning code.

Colbus: Agricultural does this fall within necessary agriculture?

Conti: Don't know.

Machelor: We don't know.

Conti: And Tim's not let this go.

Colbus: No, he's very interested because some of my neighbors have also come over expressing the same interest.

Conti: Right. So, I guess at that point code enforcement would have to determine yes its ok no its not and take it further and if it was a yes then obviously everything is fine if it's a no then he can or the other gentleman or people that own that property would have to come and try and get a use variance or decide to move their operation to somewhere else or whatever but that would be up to them.

Colbus: So, on the notice that Mr. Machelor sent me it has and I quote The Town Board may require fences, vegetation or other appropriate materials in nonresidential districts where they abut residential districts to assure privacy for adjacent land uses with visual, noise or air quality considered. Does that mean the board would ask that the commercial entity to construct the fence at their cost? That's how I read that.

Serianni: Can I just jump in here. Are you referring to the public hearing notice?

Conti: Probably the public hearing notice.

Serianni: So, what's being cited at a public hearing notice is the requirement that the 6-foot limitation on the height of the fence this is as it applies to you not as it applies to him. Now the zoning board has the ability to essentially hear alternative reasons as to why you need a variance as opposed to that. All this is citing that section of the code that places a limitation that the fence be 6 feet and allows that zoning board the ability to grant the variance. But that doesn't I guess what I am saying is that is not relevant to the question as it pertains to the next-door neighbor.

Colbus: So, should I investigate further rather they as a commercial entity would be required to erect a fence to protect us and our privacy?

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Serianni: All I would say there is it sounds to me that legal advice if you want to investigate, I can't tell you need to do.

Colbus: You can't do.

Serianni: Tim has the job of code enforcement. You want to figure out what you can do in regards to lets just call it civilly you and the landowner you got to talk to your own attorney about that ok.

Machelor: You may have a case.

Serianni: You may not.

Conti: You may not.

Machelor: May not but you know we can't even say all we're going to say today is whether or not because of your request and why you're requesting it whether we can grant you 8-foot fence a certain place and a 6-foot fence.

Conti: No, the 6-foot alright.

Machelor: Some are sixes and some are eight.

Warnick: No, I know.

Talking

Machelor: Is he allowed to go 6 feet beyond his house line.

Conti: Behind his house. He's behind his house.

Machelor: Isn't his house here?

Conti: No, his house is right here.

Machelor: Oh ok.

Conti: He's more than fine there.

Machelor: So, your fine on the 6-foot portion.

Colbus: Yeah.

Machelor: It's only the 8-foot portion that will say anything on.

Conti: Right. So, 6 foot is that's ok already so you're just asking for 327 feet of 8-foot fence?

Machelor: Now if you get permission to do this that will continue but you could not do it if you wanted to pursue other avenues.

Colbus: I will definitely look in to that to see because it only seems fair, they've created the issue first off, I will have to find out legally able to actually operate this under the zoning laws and then the next step would be to see if he would. I did ask him awhile ago and never got a response and that's why I am pursuing it myself.

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Machelor: Ok.

Colbus: My wife wants her privacy back.

Serianni: Can I ask is her here today? Is he here today?

Colbus: No. No other neighbors or residents have come by.

Machelor: This is a public hearing is anyone else want to speak to this? Ok. Any questions? Board?

Sandonato: No.

Machelor: Ok I will close the public hearing and look for a motion.

Heuck: I'd like to make a motion.

Machelor: Yes sir.

Heuck: The benefit of the applicant of creating an 8-foot fence and it's far removed from the viewability out weighs the detriment to the neighborhood or community and there for the variance should be approved.

Conti: I'll second that.

Machelor: Ok motion made in the seconded.

Serianni: Can I modify the motion just a little bit?

Conti: Sure.

Serianni: Just so we can have additional findings. The let me just orally modify the motion to include the fact that the benefit sought to the applicant can't be achieved by alternative means because of the size of the pole barn to the rear of the property. That the placement to the fence is not going to produce and undesirable change to the character of the neighborhood its not substantial it's 2 feet which is a minor modification. No environmental effects furthermore that it's a type 2 action pursuant to SEQRA. And yes, its self-created. Between the balance weighing the interest applicant against the detriments to the neighbor's properties the requested variance should be granted.

Machelor: Thank you!

Serianni: I just want to make sure that those findings are on record in the events that there's an appeal.

Machelor: So, do you agree to that?

Conti: Yes.

Machelor: Alright so were back to where we were any further questions? I will call the question. All those in favor say AYE.

Members: AYE

Machelor: Opposed? Hearing none. Lisa poll the board.

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Wisnieski: Joseph Conti: AYE, Gary Heuck: AYE, Henry Sandonato: AYE, David Warnick: AYE, Norman Machelor: AYE

Machelor: Yes, sir you're approved.

Colbus: Thank you! Thank you for your time and understanding.

Talking

Serianni: Suggestion that you recall Oliver.

Machelor: Yeah. Oliver hasn't showed up.

Serianni: Recall it.

Lady I am just observing I'm not looking for anything.

Members: Oh OK

Talking

Serianni: I would suggest that you table this and have Lisa call them.

Conti: I'd like to make a motion to table this until the next monthly meeting for November for Christopher Oliver (Christine) SBL 73.14-2-2.

Machelor: Second

Warnick: Seconded it.

Machelor: David second. Ok motion to table all those in favor say AYE.

Members: AYE.

Machelor: Opposed? None. Thank you! And Lisa you're going to call and find out what's going on. Ok motion to adjourn?

Conti: I'll make a motion to adjourn.

Warnick: Second

Machelor: All those in favor say AYE.

Members: AYE.

Respectfully submitted by



Lisa Wisnieski
Building Dept Clerk



Norman Machelor
Chairman