

ZONING BOARD OF APPEALS  
Town of Lewiston 1375 Ridge Road  
Lewiston, New York 14092  
Thursday – September 12, 2024

**Agenda- Moore Road Saph (A), Saunders Settlement Road Singh (B), Fairway Drive May (C)**

Present: Conti, Heuck, Machelor, Warnick, Sandonato

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

**Machelor so we have 2 sets of meeting minutes to take care of this morning. The first is going to be minutes from August 8<sup>th</sup> present on August 8<sup>th</sup> were Conti, Machelor, Warnick and Sandonato so they will be the only people voting on those minutes. So, I would like a motion to approve those minutes.**

**Conti: I will make a motion to approve the minutes as written.**

**Sandonato: Second by Sandonato and carried.**

**Machelor: Ok motion made in the Second to approve the minutes all in favor say AYE.**

**Members: AYE.**

**Machelor: Ok the second one is approval of meeting minutes for July 11 that were tabled in August because we didn't have a quorum. So, the people who are able to vote on that are Sandonato, Warnick and Norm Machelor. So, anyone want to make a motion to approve those?**

**Sandonato: I will make a motion.**

**Machelor: Second? It's going to have to be Gary.**

**Conti: Will you second it.**

**Heuck: I wasn't here.**

**Conti: Yes, you were. It was two months ago July.**

**Heuck: Yeah ok.**

**Machelor: Ok we have a second all in favor of the minutes as presented say AYE.**

**Members: AYE.**

**Machelor: Any Nays? No thank you!**

Machelor: 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. The first Variance request is Donald Saph 2925 Moore Road SBL 76.00-2-5.3 is

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there Someone here to speak to this? Yes Sir. We are having communications issues so come as close as you can to the table and that mic should be able to pick you up.

Saph: Can you hear me alright?

Machelor: Yeah. So, tell us what you want to do. Tell us what your project is.

Saph: I 'm looking to build a pole barn. A 48 wide by 64 deep with 16 high walls.

Machelor: How high?

Saph: 16 foot high.

Machelor: And the height you want to go to?

Saph: The if I built at grade and with the 4 12 pitch it would be 24 ½ feet. I shot a little high only because I want to be a little above grade and just in case of water issues and that type of thing.

Machelor: So, you have adjusted your request from 27.

Conti: Well no. He's saying if he stays are grade it would be 24 ½ feet. So, he wants to have it up so he doesn't have any water issues. He still wants it at 27 he's just explaining... Right.

Machelor: Ok.

Saph: I plan on being about a foot above grade but I shot a little high just in case because I didn't want to be too high if anything I shoot a little higher than be lower.

Machelor: Ok.

Conti: What is the maximum you could go to at the height that you feel comfortable.

Saph: You're saying above grade?

Conti: Yeah. Your saying grade is 24 ½ so what would you be comfortable with at the max?

Saph: I would say probably a foot.

Conti: So, 25 ½.

Saph: Yes.

Conti: And this goes all the way to the back of your lot, correct?

Saph: Correct yes. I'm I think it was 11 feet from the west side and 12 feet from the north side.

Machelor: And there's a shed that use to be there but it's not there anymore?

Saph: Correct. So that north west corner of the shed would be the north west corner of my building.

Machelor: Right. What do you intend to do with it?

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Saph: Store vehicles my everyday vehicles I have other vehicles I have recreational vehicles and I would like to get a toy hauler an RV which has a spot in the back for my motorcycle and any of the RV's now are like 12 foot 4 because of the air conditioners there on top so unfortunately it goes to a 14-foot door and for height for the header proper support you need 16 foot...

Machelor: And the pitch.

Serianni: What's at the rear of your property?

Saph: Al Neadow's property. He's owned my property and the one next to me so he has like I think 40 some acres that go out from him and then goes like an L.

Serianni: Is it vacant land?

Saph: Yes, it is.

Conti: Is it farm land?

Saph: He does not farm it on the west side more he has a farmer that farms it. That farms some of it.

Conti: So, the property behind is basically land locked there's nothing they can really do with it.

Saph: Yeah, no correct.

Machelor: Questions? Dave?

Warnick: Nope I am all set.

Machelor: Henry?

Sandonato: Yeah, this one drawing here with the 4 12 pitch.

Saph: Yes.

Sandonato: Is that...that would be the 27-foot mark then real steep or anything.

Saph: No, it's 4 12 so I can go real steep with it trying to stay as low as I could.

Sandonato: Even with 4 12 it still ended up being very close to 27.

Saph: Correct.

Machelor: Gary anything?

Hauck: No.

Machelor: Alright. Thank you! Is there anyone else that would like to address this issue? Ok we will close the public hearing and ask for a motion.

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Conti: I will make a motion. Based on the board's discussion and the following considerations. Whether an undesirable change in the neighborhood there's other pole barns in the area that are similar to what he is requesting. Whether benefit sought by the applicant can be achieved by feasible alternative to the variance, yes it can by making the pole barn smaller. Whether the requested variance is substantial if you look at the way the rules are right now it is but we've been in the process of changing the height on pole barns for 2 years to get it to 22/24 feet so that kind of brings that substantiality down more. And whether it was self-created yeah because you wanted to have a larger pole barn. But based on these considerations this Zoning Board determines that the benefit of this variance outweighs any detriment to health safety and welfare of the community. That the variance request is the minimum necessary and the variance be granted with the condition of it being 25 ½ feet which you were saying you could do with 25 ½ feet. Ok the Variance would be approved.

Machelor: Ok. So, we have a motion. Second?

Warnick: Second.

Heuck: Second.

Machelor: Ok both of them Dave and Gary. Any further discussion from the board. Hearing none I will call the question. All those in favor say AYE.

Members: AYE.

Machelor: Hearing none. Lisa, please poll the board.

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

Machelor: It's approved sir.

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Machelor: Ok the next one is variance request Bhavdeep Singh 2938 Saunders Settlement Road SBL 118.20-3-9. Would you please come up and approach the Board.

Singh: Good evening.

Conti: Ok just state your name and address please.

Singh: My name is a Bhavdeep Singh I am based in Toronto Canada but have an E2 investor visa so my address is going to be 2938 Saunders Settlement but it's a vacant lot so.

Conti: Ok. Go ahead and explain what you would like to do.

Singh: Yes, I am applying for a use variance for the 2938 Saunders Settlement location for a drive-through. It comes under TND zoning right now which allows for sitting restaurant but not for a drive through so I am requesting a variance. A few days back I had sent Tim with a detailed information of why it should be approved and how the Town is missing out on \$17,000 every year in tax. On the very same property just across the street is a Tim Horton's with a drive through its half the size of our property. And just because it came in the town of Cambria, they are getting school taxes and property taxes.

Conti: But that's a different Town different zoning.

Singh: Just across the street.

Conti: I understand that but it's a different Town different zoning law and everything else so... And it's in a little bit of a different setup too it's all businesses there.

Singh: But there's a residential.

Conti: Beyond that, but here it is all residential.

Singh: Corner lot.

Machelor: Which is probably the reason that a drive through is not authorized in that zone.

Singh: I understand that completely but it's just that I understand that it's a different Town and it's a similar setting because it is commercial right across. So, 11 years back 12 years back Tim Horton's wanted to get this property the 2938 Saunders Settlement but at that time it was an R2 residential zoning it was not TND zoning and after 2 months with working with the Town and Town not approving it they decided to go to Cambria. And that's my concern because not that property The Tim Horton's in Cambria is assessed to 710 thousand. And they paying \$18,000 every year in taxes and you're missing out.

Conti: Right but part of a use variance that has nothing as part of the use variance. The feasible way of return is for you not for the us. That feasible rate of return to say well you can get more taxes if you approve this. The feasible rate of return is how much more you would make.

Singh: Right. But 12 years back the reason why that drive-through was not approved was not only just because it was a residential and now the town was having discussion to consul into a TND zone. But one of the reasons was traffic which the traffic has increased over the course of 12 years. Especially because of commercial zone across the street with the CVS and KeyBank and there's Family Dollar before there too. That's already stated. But the thing also drive- through noise there was an issue that was discussed 12 years back. Over the 12 years the technology for drive thru speakers and everything like that have significantly improved and the noise has

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decreased. So, if we don't go ahead with the drive thru then if it's a sitting restaurant then the Niagara Falls the Niagara college is right across, and we have done informal survey's and we have been told that they are really looking for some night life there like a bar or something like that. Which would not it would attract the wrong side of the crowd so I would rather have a drive- through approved there. I think that a family friendly restaurant little leagues and stuff you know.

Machelor: The difficulty is that the Zoning Board is only going to deal with one particular thing, and that's weather or not we will alter the zone in other words give you a variance for what you want to do. And it has absolutely nothing to do with what Cambria does or how much money is involved. We don't deal with money here. You guys bring your projects forward and you pay for them and you benefit from them and the Zoning Board is just here to say wait a minute you can't do that there. So...

Conti: To get a use variance in the State of New York, at least I don't know about other States you have to hit every criteria, on the use variance. Which is almost impossible to do. The first one right off the bat the applicant cannot realize a reasonable return as shown by competent financial evidence. The lack of return must be substantial. So right off the bat you would have to come up with the differences that having a regular restaurant in that spot versus a drive thru. And then right off the bat the alleged hardship unique to the neighborhood. It is unique to that particular spot. Not talking about Cambria again that's a whole different Town. The alleged hardship is self-created and it is because this is what you would like to do. So, I mean you have to hit every criteria, on a use variance an area variance is totally different.

Machelor: And I think has to be said we can't approve a thing like you are asking. A use variance without as Joe says hitting each one of those things that we can demonstrate that, that's true when we approve a variance.

Singh: So, I have been through that and I am not sure. Do you have the proposal in front of you? That one I sent to Tim.

Conti: Yes.

Singh: With all 4 points in there.

Conti: But the money that you were referring to is the additional tax money to the Town that's not the reasonable rate of return. The reasonable rate of return is to you. The more money you make personally.

Singh: That's where the I understand what you are saying but its just that if I open up a regular sitting restaurant it might not be a branded restaurant like a McDonalds or Starbucks or anything like that because they are seeking a drive thru to open u there. And then comes to that fact that I would have to invest more money into getting a no named or low brand or my own brand sitting restaurant there. Where I would like a family branded restaurant that could be a hardship for the financial rate.

Conti: But you have to have financial, you have to show actual financial evidence. It can't just be you saying that, well this could be happening and stuff. Anthony can probably explain it.

Serianni: Can I back up just for a second here. So, you had previously said that you had conducted a I believe you said a survey of students at Suny Niagara.

Singh: Informal survey.

Serianni: An informal survey. What kind of a amenities in the surrounding area would be in high demand. And you said that bar was the top contender.

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Singh: Because they would have to go to Buffalo for a night club.

Serianni: So why don't you explain to us why can you not put in a bar for financial purposes opposed to the Drive-through.

Singh: I personally would not have an issue putting a bar over there but I am also thinking about the Town and the community as well because when 12 years back they had issues with noise and everything like that. They would have more issues if a bar was there some elements, they would not the Town is still surround by residents so it would be late night closings and stuff like that loud music and all kinds of stuff. I am also thinking about the Town and my neighbors.

Serianni: The character of the neighborhood.

Singh: The character of the neighborhood too. It would cause more issues and that.

Serianni: So, let's extend that same line of thinking with regards to just a traditional restaurant a sit-down restaurant as opposed to a brand name franchise restaurant. Having/ we don't have any of this in front of us by the way. We don't have any financials that show that a bar would not be a financially viable or in the alternative a non-franchise restaurant just a traditional restaurant that you could open up. The Board would need that confident financial evidence in order to grant that use variance it's a very necessary.

Conti: But that's just one part.

Serianni: If that's conditions not met you can't grant the variance.

Conti: Right off the bat right that's just number one. Right.

Machelor: That's the problem. Any of the conditions it's a hardship that's been self-created. It was created by you by proposing to do this and we said well you're the person that's asking this to be done. We said well...

Serianni: Let first back up and flush out the financial evidence issue first.

Machelor: OK.

Serianni: Just because I want to make sure he gets this side cross with regards to the traditional restaurant because you haven't provided us any financial evidence that that would not be a viable option.

Singh: If maybe viable option but I would think that the Town even myself would like a branded location over there. Because say for example if I open up a no name or even my brand in there then that would be more investment for me to put in a get the permits of building drawings I am in the trucking businesses I not in the...Right now with not having this use variance there's multiple branded restaurants which I say no for coming into that property that's a financial loss for me because now I have to think about...and then again its not my expertise to open up a no brand or my own restaurant I am not in the restaurant business. So that's why I am saying that because I have restaurants which are looking or excited to open and it meets all the criteria it's a corner lot across the...

Conti: But see that's also a thing that we have to look at as far as traffic patterns and stuff. To say yeah are we offering by changing the making it to a use variance and allowing that drive thru. How much additional traffic is going to actually take over that corner? That's a bust corner to begin with.

Heuck: That's a state highway.

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Conti: That's a state highway.

Singh: Understand.

Conti: So that's all-additional stuff we have to look at also.

Singh: So, on the proposal itself it did say that if this town would like us to do a traffic study, I am more than willing too.

Conti: I don't know if the town would have to do the traffic study would it.

Heuck: No.

Machelor: Well, they might want to. Those things are all separate issues we don't actually deal with them. We don't deal with traffic we don't deal with noise.

Singh: I understand.

Serianni: If the applicant wanted to provide a traffic study with regards to the impact on the neighborhood that would be something to consider. Not withstanding that I am kind of caught up on the first prong still.

Singh: May I sorry. May I add that when the Family Dollar was open which was very recently there was a traffic study done because I spoke to Tim about it. So that's why I spoke to Tim about it and said that a traffic study was done and there was like 12,000.

Conti: You're here across the street is the bank college the garage where's the Family Dollar?

Warnick: It's next to the pizza place.

Singh: Right beside the Tony's.

Machelor: Next to the pizza place.

Conti: Oh, ok across the street and down.

Singh: 12 years back things have changed a lot so there's a lot of businesses are open yes; the traffic has increased. Again, I understand that you can't take Cambria as an example but there is a full fledge mall plaza with so many flourishing businesses there. Again, I understand completely but that doesn't change that much traffic.

Conti: See the hardest thing that what you're asking for a use variance like I said earlier is extremely hard to get because of the fact that you have to satisfy every criteria on it, or area variance some yes some no like the one we just heard.

Sandonato: Do you have a copy of all the variance of the requirements is that something you are familiar with?

Conti: Did you have a list of all the criteria.

Singh: For the variance.

Conti: For the use variance?



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Singh: Yeah

Conti: Well yeah because you filled it out right here. Cause you filled it out.

Singh: And also, with the proposal here I have that. For example, the first one was the unnecessary hardship again the property taxes we are not taking as a hardship because it's for the Town and it's not for me which I disrespectfully disagree because the Town is losing out on this money the school is missing out on this much money.

Serianni: That's great however that's not the legal criteria. Rather the issue is the impact on you, you need to provide the proof or the case to the board to justify why you are asking for this relieve.

Singh: And then the second would be again the town engineer because I just found this out its that the branded restaurants want to come in but they wanted to do a variance over there and if they don't come then it will cost me more money to build something of my own brand which is not my expertise and I not into development I am not in the restaurant business and I honestly do not to get a bar involved or anything like that because I also...If I were to move in Sanborn if I were to move in that area I not want to live next to a bar it would cause more issues. So, if you could see that from my perspective that like if I could give you that McDonalds and all these kinds of restaurants that you're interested getting a location over there. And it meets all their criteria the only thing that's missing is the drive thru variance. And that's a loss for me because I have to say no to them and then think about building a anything else other than that would cost me more money.

Serianni: Just adding to that have you considered developing that property for residential purposes?

Singh: Anything but it will cost me more money. And like I said I'm in the trucking business. I'm not an expert at that it might even make me more money... housing on top and shops underneath. But the whole key point is the initial investment it will cost me more money rather than for example McDonalds just come in right now saying that we just want to purchase the property will do/feel everything out and I can focus on trucking side. So that's the first one from my understanding if you guys will take it. The second is unique or highly uncommon circumstances. The property is located TND it was previously rejected but it underutilized for the use becoming a brand name restaurant will help that. It's most of the stuff I understand is going for Cambria because its comparing to Cambria. But Cambria if it was like 5,6 feet down the road or if it was across the block or somewhere else, I could totally understand. Unfortunately, it's right across the street.

Machelor: It happens to this board frequently because people come and ask the Town of Lewiston if we can do this thing and they point to the Town of Niagara, Town of Cambria, Town of Porter and we say sorry this isn't there. So, we have to abide by own stuff and you know today you haven't satisfied me that any of these 4 use requirements are satisfied. Someone say by the financial requirement your hardship is...

Conti: The hardship you said not capable of yielding a reasonable return yet if you build a small plaza with house/student housing above it that would make money, a restaurant would make money maybe not as much as you want but it would make money, a bar it is a....

Singh: I understand what you are saying. It's just not my expertise and you know its not like something which I am a trucking a guy and you know.

Conti: What I was looking up here was the following uses are specifically prohibited within TND Any use or structure with vehicle drive- through facilities that's A number 1. Parking lots built to serve a use on another property, truck terminals, wholesale or retail distribution centers, automobile and marine sales and service, Self-storage facilities, outdoor storage I mean it goes adult entertainment, actually adult entertainment but that's

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something a little different, junk or salvage yard and so on and so forth. So, it's all explained right in our zoning codes. So, that's where the hard thing.

Singh: Bar are allowed?

Conti: I think they are this is the prohibited section.

Singh: Sitting restaurants.

Conti: Where is the... I think I did see it.

Machelor: You know we said earlier that were allowed to change the variance for reasons. We are allowed to change them for area variances the first person that come up here got a variance for what they wanted to do. They don't have to meet all this criteria they only have to meet some of them then it's a subjective judgement whether that's an appropriate thing to do. But in you case we're stuck with this is State law. You know we have to say that all 4 of these things are met in order to approve a use variance. And its particular for a reason because the use of property is the most important thing about the property. That's why R1A's are for houses and R2's are for apartment buildings and so on. So, when we get to these zoning areas, we say these things can't happen in that zone unless you come here and if you could prove all 4 of those things as our attorney said if you came back with a financial plan then you would satisfy that one and then we would go on and talk about the hardship the variance and all the rest of it. So, I think Anthony is probably right if you would like to pursue it the best way to do it is to come up with a financial plan that says you can't receive a good return on your investment by doing it any other way than your way. That's the key right there. Because that's the only thing we are going to vote on here is that.

Conti: Now I did find the permitted uses so its personal service shops, retail sales establishments including but not limited to antique shops, bakeries and other similar establishments, restaurants with indoor seating no drive-throughs, financial institution, professional offices, art, craft, dance, music schools, photography studios, funeral homes and mortuaries no crematoriums, places of worship, private clubs and lodges, medial offices and clinics, community facilities, libraries, public parks, playgrounds and public recreation areas, mixed use structures like you were saying putting downstairs..., residential on the second floor of commercial use, Single family and two family residences including second story dwelling units. Does not say that a bar permitted. Now with special permitted with a special use permit and it's all in the codes.

Singh: I've seen that.

Conti: Ok so you seen this. So, it does not say that a bar is allowed in that spot so that's kind of...

Singh: My 2 concerns is that say if I go by and start the financials and everything like that and then I come to the next meet which is next month in October I will pass the first one then it will come to the next 3.

Machelor: It very well could.

Singh: How do I pass...

Machelor: All hands are tied about making decisions on those things.

Singh: And respectfully I understand it's a little bit of the law and everything like that but what does the Town does not benefit from having a restaurant over there.

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Conti: But see we are locked into the use of that property. Of that area that you are in is a TND right, traditional neighborhood design.

Serianni: Just have to remember that the Town ways a policy interest when they decide to zone a particular area as this traditional neighborhood district. The idea is that the character of that district does not become overly commercial. Maybe that does come at the cost of some kind of tax revenue however the Town has determined that it's more important to preserve the character of our neighborhood as opposed to allowing developments and constant development over the property. So, the Town does have an interest in maintaining the zoning in that state and I respect you position I think if the standard were lower you would have a pretty sound case for it. It's just that in order to demonstrate unnecessary hardship you really do need to show that your investment opportunities are limited to the extent where you need to have this drive-through.

Singh: So... Talking of the character with respect to that so on Townline and Saunders Settlement there opposite side where the Family Dollar is and Tony pizzeria is that a TND district as well?

Serianni: I'm unsure off the top of my...

Conti: I don't know.

Machelor: We say this again it's that particular piece of property only not comparing it to properties on the North, South, East or West its only that one piece. So...

Singh: That would be the unfair thing for me....

Machelor: You could make a case that your use would not be a detrimental... Well, the Board would have to find that, that's true. Just like the financial thing you come up with a financial plan that says I can't get a reasonable return unless I get exactly what I want. That... Bring that financial stuff in we'll look at it. I think hard to do because Joe read 20 different thing you could do on that piece of property besides the one you want to do.

Singh: The reason why I want to do that its less investment for me and less time for me and less of the expertise which I need to use on that. I understand I may be able to make more money but it's just that I would need more focus my attention my time management my expertise which I was not there and do that project where I can have a branded restaurant over there who are just waiting for this use variance and go from there. It will be less investment from me which means less funding that I need to raise and that is a finical hardship. That's my argument.

Machelor: As our attorney said you have to bring us that financial information. That proves that and it has to be correct. I don't see it. But I am not a financial guy. So, I don't know.

Conti: And that's just number 1. You still got to go through the other ones.

Singh: And then the character and then because it's the opposite everything is commercial is already built in restaurant.

Conti: But not in right in that area.

Singh: But that was not self-created right.

Conti: But see like I will just grab the end one here the alleged hardship is not self-created but it is self-created because this is what you want to do. You want to make it easier with less investment to put a drive-through

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restaurant versus maybe more investment on your part but still be able to make the same kind of money but maybe more work on your part. By putting in one of the other things I had mentioned. I mean so it's are hands really tied on a use variance. It's one of the hardest things you could possibly do.

Machelor: I'd like to take a minute here and ask if anyone else in the audience wants to speak to this issue. Yes sir. Would you come up and state your name.

Conti: You could sit down.

Walter Cowan, I live at 5772 Townline Road right next to that property. Now this is my wife Kathy I don't want to see a bar I definitely don't want to see a drive-through restaurant. There's a lot of reasons first off coming in off of 31 that's the only way to come in, their going to have to exist right next to my property and they are going to have to go to the right. Which is going to impact me getting out of my driveway. It's already bad enough with Tops.

Kathy Adowski: There's a lot of action existing that corner.

Cowan: There's been 7 accidents since we moved in 2 years ago, 3 this year. One was a periso truck the other was a couple SUV's and I saw both of them happen when I was working in the yard. Now there's a lot of reasons why traffic number 1, that has to be looked at by the state or the Town, highway department. How about dumpsters noise, Tops their dumping when we first moved in 2 years ago they had Modern use to come and they use to pick up the dumpsters 4/5 o'clock in the morning I use to hear it and I would go right back to sleep. Now they've changed that their doing it later in the day ok that's great. But the point is Tops was there long before I was there and if I was there before Tops wanted to put that plaza in whoever owns it, it would have been a no go but that's Cambria.

Conti: That's Cambria.

Cowan: I wouldn't even have one say about it. Alright. The next thing is rodents. A restaurant of any kind is going to bring rats. You know it I know it. They may take and put things around the restaurant the dumpsters to help contain it but its going to bring the rats. They are not going to get them all. I live before I moved here; I lived in North Tonawanda. I lived right behind the lumber company on Felton Street. I had 4 unit building which was actually a double but I rented it out as a 4 unit. But apart from that I had river rats because I was right near the water. So, I use to have to put stuff out my self to kill whatever came around. I was the last building on the right before you hit the river alright. Next thing how about exhaust noise that's going to be constantly going exhaust fans smell of grease right now I don't smell Hortons I don't smell Subway and those are commercial properties. Whatever they have done to... also Hortons closes at 9 o'clock at night their drive-through is closed now I don't know if this gentleman wants to close at 9 but I definitely don't want light blaring through the side of my/ onto the side of my home. I don't want any of it, it's a residential and its residential for a reason. The next thing is I mentioned the cooking grease the illumination and how about let's talk about a bar. How many bars have been shot up in this county I don't want a bar next to my home.

Conti: Well, we went through that, that's not one of the permitted uses.

Cowan: I understand that. So, you also talked about some type of a shop. Shops well I can't see anything other than a double or a single home put on that property to live in it by the owner because if you take a look at there is a driveway in that grass. The curb has already been cut and there are 2 clothesline poles. There was a house there at one time.

Members: Oh yeah

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Conti: The zoning on that right now and that's what we have to deal with, the zoning on that property right now is TND traditional neighborhood design. Which allows the things I had mentioned. So, this is something over and above that and that's what he's requesting a variance/ use variance for a drive-through restaurant. A restaurant without a drive through is acceptable use for that.

Conti/Cowan talking

Cowan: It's a residential neighborhood. There are houses that are going to be behind this restaurant they go right to the curb near 31. And that's exactly what...

Conti: I totally understand what you are saying. I went and looked at it and stuff. But the way it's zoned today it is allowed that is allowed use of that area of that corner.

Machelor: We don't have a final say in this either. If a person wants to develop their property and it doesn't require a variance then you go to the Town Planning and tell them this is what I'd like to do. And the Town Board could say well we are not so sure that's a good idea here and that could absolutely happen. You could make your case to them why you would want any restaurant there. You would make it to the Planning Board and if it passes the Planning Board it goes to the Town Board to make a decision.

Cowan: The point is what's it going to do to my properties value?

Members and Cowan talking

Conti: Today we are only here about the drive-through use variance request. That's the only thing we are here today for. So...

Machelor: And it's not permitted so that's why he had to come here and ask for a use variance. And now we've told him if you want to get one, you're going to have to come back with other information for us to see what we can do. But if we were to approve it then your issue is to go with the Town Board and the Planning Board and say these are the reasons, I don't think this should happen and we will have to see what happens but we are only dealing with zoning on that lot and it says no drive-in restaurant on that lot. We are going to have to see ok. Anybody have any questions. Thank you!

Cowan/ Adowski: Thank you!

Machelor: Anyone else it's a public hearing anyone else want to speak to this?

Singh: May I just

Conti: Sure

Singh: Like I mentioned when I started up that I'm not sure if it's a sitting restaurant and if they are allowed to serve alcohol there...

Conti: But it's a restaurant.

Singh: With alcohol.

Conti: With alcohol but that's not a bar. A traditional bar night life bar most time at least when I grew up

Singh: But would that be considered sitting restaurant...

**ZBA- 09-2024 (B)**

Machelor: You have to understand about the zoning it's so important that you get the concept on the zoning. The only reason you're here is because you can't do what you want to do in that zoning. It's not about...

Conti: You would have to cover that with Tim.

Machelor: You have to go to somebody else for that issue.

Conti: In our department. I can't sit here and say yeah you can do this, this I am talking about what the general things come out. If you come up and say I want to put X you have to cover that with Tim. As far as today that's all we are here for is the drive-through portion.

Singh: So, a sitting restaurant is allowed I will work with Tim on getting that and that restaurant sells alcohol?

Conti: I have no that's something

Machelor: It has nothing to do with alcohol.

Conti: We have nothing to do with it.

Singh: The point about the property prices.

Conti: Just the mic has to pick it up.

Singh: Sorry if a Starbucks opened up in the area it actually elevates the value for the houses because its that brand and a Starbucks with a drive- through it's perfect because it does elevate. So would you rather have a restaurant with alcohol versus Starbucks which will increase the value of your property.

Machelor: Sir we are only dealing with zoning. Only zoning.

Singh: I am just saying he was concerned about the property value.

Machelor: Ok alright. Anthony would it be appropriate to ask him if he would like to withdraw this and come back with information in the future.

Serianni: You could ask him that certainly.

Machelor: Would you think that is an acceptable solution. Would you like to bring financial information back and see if you could meet one of these things.

Singh: My only concern is that if I did bring the financial can we discuss the other 4 then I can bring the other stuff.

Machelor: It's a different thing really. It's a different thing.

Conti: But I guess what he's asking for is he doesn't want to take the time to put all the financial stuff and then now number 2 he can't do anything.

Singh: And get stuck at one.

Machelor: Yes well, we can't say that today. We can't say that.

Conti: Well yes. We can go beyond that.

**ZBA- 09-2024 (B)**

Warnick: All four. To prove all 4. No, I get it.

Members/Singh talking

Singh: I can come up with a financial plan and stuff.

Warnick: So, you're not spending 4 time here.

Conti: I am going to tell you what the next one is the applicant cannot realize a reasonable financial return on the initial investment for any currently permitted use on the property but you can.

Singh: That's the first one we talked about we can open up...

Conti: I'm sorry.

Singh: The second one is unique or highly uncommon circumstances effecting the property.

Conti: And that's mostly all residential houses there. I can't worry about what's across the street what's in a different plaza what's in the commercial spot in another Town.

Singh: But it was a residential before but now it's a mixed use.

Conti: It is a mix use but its not a drive-through mix use.

Singh: So how do I?

Machelor: You will have to go to the essential character of the neighborhood.

Serianni: You are going to have to decide that.

Machelor: essential character of the neighborhood that's the next one. It's a residential

Singh: Right across is all commercial.

Machelor: Residential neighborhoods don't have drive-through restaurants.

Conti: Residential behind it residential on the side of it.

Singh: How can you call that a TND with a mixed use with commercial and residential and then at the same time take that away from me because there's residential across.

Machelor: Because we wrote the regulations that say no drive-in restaurants. Your still in the same place.

Serianni: It doesn't sound to me that really is based on the other criteria that we are discussing here sound to me like especially given the fact that we have the self-created hardship you can certainly withdraw I don't think the Board is willing to represent to you today that if you were to address the financial issue whether you'd meet the other 3 prongs.

Singh: There's residential behind the Family Dollar and Tony's pizzeria.

Conti: That's got nothing to do...

**ZBA- 09-2024 (B)**

Machelor: You mean a different Town?

Conti: No.

Talking

Serianni: What I will say is that the zoning district is...

Singh: It's the same Town Lewiston Town.

Conti: I don't know what the zoning is.

Serianni: I don't know if the zoning district is the same that's all I wanted to say.

Singh: Because its across the street.

Conti: That doesn't mean the zone is the same. Zoning goes...I don't know it could be but no of us know here at this point.

Serianni: I don't know the map off the top my head, but what I do know is that I don't believe the Family Dollar came in before the Board for a use variance if you are apply for restaurant without a restaurant or without a drive-through you wouldn't be here seeking a use variance as well. So, I think we are comparing apple to oranges.

Conti: You could withdraw it. I will tell you the last alleged hardship there is no alleged hardship.

Serianni: The Boards not really representing to you that it's...

Conti: Even if you came up with the financials...

Machelor: The hardship happens when somebody gets a piece of property and because of the character of the property they ask to have something altered because it can't be done within the rule because of the character or what's there already for example. But you don't have that you're bringing the project forward saying this is my project who's creating this project I am and we say well that's your own project and you created it. So, we can't say that it's a hardship that somebody else created by the character of the neighborhood or something else. When you bring these proposals forward you except that and say this is my proposal and it's the hardship only because I want it to be only because I'm asking you to do that. And we say well...

Conti: And even in the hardship part of it you can go back to where you said you purchased it in 2021 for \$35,000 and you're saying that the market estimated market value is \$300,000. So, if it all fell through you could just sell it and make a good chunk of money and walk away from it all. So, it would be...

Singh: So, withdraw it or can I appeal it somewhere to the State or something? Do I withdraw it or come back for another one.

Machelor: Well, you could come back but we are trying to avoid what you're saying.

Serianni: Hold on.

Conti: Hold on.



**ZBA- 09-2024 (B)**

Serianni: So, you can withdraw it or you can ask the Board to make a decision tonight. The Board makes a decision they can either grant it or deny it pass that you could talk that decision to whoever you want too and decide what you want to do with it that's up to you. If you withdraw it the Board doesn't make any decision ok.

Conti: And if we make a decision tonight you could try to fight it but you also cannot make another use variance on that property for a year. So now your kind of pushing everything back out. So, by withdrawing it that eliminates that. Even if...I don't know if you could put an area variance if we refused a variance all together.

Serianni: I think you can apply for a different variance/ area variance I don't think you could apply for a use.

Singh: So, if the area variance can we change that to...

Conti: No.

Serianni: No, no, no that's not that's a request for rezone.

Conti: That's the Town Board.

Serianni: That's done by the Town Board.

Conti: That's not us.

Serianni: An area variance would be say for example you decide to build a commercial building and you have a question in regards to setbacks or the square footage is in excess of what's permitted on the lot you would come back and ask for those. So, think of it as like dimensional, dimensional issues with the lot.

Singh: Can I still do that with the zone board if I can request...

Serianni: If you are going to request for a rezone, you have to request the Town Board.

Conti: That would not be us.

Serianni: the Zoning Board of appeals doesn't have a problem.

Singh: That's a possibility.

Serianni: You could presumably do that. Exactly. It's done by a local law.

**Singh: Ok. At this point I think it will be better if I withdraw it. Get more information see what options are best for me. If I have to through the rezoning for that particular lot, I think it would make more sense because I don't want to spend more time on the first point and nothing get...**

Machelor: Agreed.

Conti: And I'd hate to see you do that. Waste all that time and money.

Singh: I appreciate your time. I'm doing this for the first time.

Members: Thank you!

Machelor: Ok I will close the public hearing and there's no Vote.

**ZBA- 09-2024 (B)**

Serianni: It's Withdrawn.

ZBA- 09- 2024 (C)

Machelor: Ok. Lisa who's is up next?

Conti: Larry and Denise May. I am looking at it and I couldn't tell. Ok

Machelor: Request a variance for a 15-foot side yard setback to place a shed 4 feet from the property line.

Larry May: It's a shed /garage. It will have a garage door and look like a garage. Ok I have a drawing if you want to see it.

Serianni: Could you just state your name and address.

Larry May 504 Fairway Drive Lewiston New York.

Machelor: Ok.

Singh: Excuse me are we allowed to leave.

Conti: Yes. Thank you! Go ahead now you can explain what you want to do.

May: It's a shed/ garage they call it a portable garage is actually what they call it. It will be either by Heritage builders or Sturdy shed. We want to put it on the side so its accessible from where our driveway is ok our driveway runs off, I can't even remember the name of that Street.

Heuck: Lyons.

May: Lyons didn't even know it had a Street name until I came down here. The property behind me is there nursing home and it's wooded between us they actually just cleaned all that out nicely thank you. And the garage that we currently have on the house is a two-car attached however apparently 2 owners previous to us they converted it into a daycare. The next owner must have gone back to the garage but there is only a half wall in there and then there's also about a 10-foot ceiling.

Machelor: Can you come up and show me this.

Talking

Conti: Your property line? Is this your property here? This line here is that your property line?

Machelor: That's over head wires.

Conti: Yeah, I know that.

May: This is overhead wires this a fence back here.

Conti: But the nursing home owns the fence.

May: Right.

Conti: Doesn't it go like this somewhere?

May: It goes straight across.

ZBA- 09-2024 (C)

Conti: It goes straight across.

May: Yes.

Conti: So, your property line is straight across back. Is there a reason why you could put it back more here.

May: I could but we got the pool right here ok and that would not give access off my driveway.

Talking

Conti: Yes, yes, its 15 by 25.

May: That's with the pad. Its actually 12 by 24 but the guy that I called to do the stone said he needs an inch on each end so it actually 12 by 24.

Conti: Ok so all this is 13 by 25 ok.

May: Yeah.

Conti: So...

May: Giving a little gap between the pool fence there and the garage itself is just enough area to give me a lawnmower between so I can keep it up.

Machelor: Is it fenced? On that side? Is there any fence here.

May: No on Lyons Road no. And this is 20 from here to Lyons Road is 26 feet. On this side her my neighbor has a shed because there is another house right across from this.

Machelor: Well, the point is your asking to be closer to the property line not the road.

May: Right exactly.

Machelor: We deal with that all the time because people don't really know.

Conti: And the shed is staying there, right?

May: No.

Conti: You're going to remove the shed.

May: Its kind of old and getting cruddy.

Machelor: Board you got questions?

Heuck: No.

Machelor: Is there anyone else that would like to speak to this? No

Talking

ZBA- 09-2024 (C)

Heuck: Consul.

Serianni: Yes.

Heuck: Being that it's a dedicated road but not existent in other words its not a road. It's a dedicated.

Serianni: It's a dedicated road so the Town has it declared as road.

Heuck: Right its Lyons Road. So, my question really come to is there any future in that road as to being utilized for residential usage.

Serianni: I believe the underlying issue in regards to using the road in the future is that the nursing home is located to the rear and it's a very large parcel my rough understanding is that, that road was originally intended to extend all the way out to the other side of the nursing home. But since the nursing home purchased that entire property that road is essentially to nowhere. I don't think unless a near easement were to be assigned to allow the Town access to go all the way to the other side, I don't think the Town would do that.

Heuck: I don't think that's every going to happen.

Conti: No.

Heuck: But then again, we have to abide by what's you know.

Machelor: It a substantial amount that's for sure.

Heuck: As for the dedicated road.

Serianni: Correct but its still just the question is the setback from the road. The request is still the same notwithstanding.

Heuck: Still the same. But if that road wasn't there

Serianni: It would presentably just be a boundary.

Heuck: He wouldn't even have to come to us for a variance.

Serianni: You have another neighbor on the other side on that road right.

May: On the other side of that road yes. It use to be a State Trooper at one time but he passed away.

Heuck: I ride my bike down there almost every day so.

May: And like I said if you went back behind the nursing home or behind the fenced property along Lyons Road there, they put 4 sheds back there for their maintenance people.

Talking

Conti: You can't put a car in garage.

ZBA- 09- 2024 (C)

May: No, its like a half wall in there and like I said as far as storage and stuff goes, they dropped the ceiling and its probably at max 10 feet in the garage so I have limited storage and eventually that plan is to turn that garage into a master suite since they already kept the dropped ceiling in there.

Conti: I am just looking at the google maps of that spot.

May: Is it still the white house or the blue house?

Talking

Machelor: Alright thank you! I will ask the board any questions? We are going to close the public hearing there is no one else here. Anybody want to make a statement a motion or question.

Conti: Ok. I'll make a motion based on the boards discussion the following considerations whether an undesirable change will be produces in the character of the neighborhood considering it's a dead end street that will never go on because of Our Lady of Peace nursing home it really is not going to make much of an undesirable change whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance not really considering that he wants to use the driveway and make it into a garage. Whether the requested variance is substantial yes, it is substantial its going from 15 feet to 4. Would the variance have an adverse impact on the physical or environmental character of the neighborhood no it would not. And whether the alleged difficulty is self-created yes, it is because they want to build a garage there. The Zoning Board determines that benefit of the variance to applicant out weighs any detriment to health safety and welfare of the community that the variance request is minimum necessary and the variance be granted.

Machelor: Second?

Warnick: Second.

Machelor: Dave seconds. Any further discussion? Then I will call the question. All those in favor say AYE

Members: AYE

Machelor: Lisa poll the Board

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

Machelor: Its approved sir.

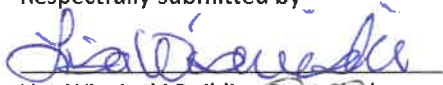
Talking

Machelor: Motion to adjourn.

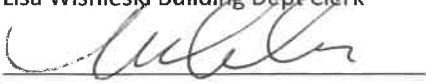
Heuck: I'll make that motion

Sandonato: Second.

Respectfully submitted by

A handwritten signature in blue ink, appearing to read "Lisa Wisnieski", written over a horizontal line.

Lisa Wisnieski Building Dept Clerk

A handwritten signature in black ink, appearing to read "Norman Machelor", written over a horizontal line.

Norman Machelor  
Chairman

