

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – December 13, 2018
ZB 2018-12

Present: Balassone, Baker, Heuck, Machelor, DeCastro

Machelor: I would like to call the meeting to order.

Pledge of Allegiance

Machelor: I can't ask you for a motion to approve the minutes because the minutes are missing today. We will approve them next month.

A motion to carry it over to the next meeting was made by Heuck, seconded by Baker and carried.

Public Hearing opened for a variance request from Justin Snell, Bridgeman Road, SBL# 118.00-2-52, for a variance from Section 360-185, E, Accessory uses and structures from the maximum height limit of 18' to 21' to allow for construction of a 40'x80' pole barn. The property is presently zoned RR, rural residential.

Machelor: Would anyone like to speak to this?

Justin Snell: I'm the one looking to build.

Machelor: Tell us about your project.

Snell: I'm looking to build a pole barn that I can put my boat in, lawn mower and a couple of trailers with snow mobiles and other objects I have that I'm looking to keep dry and out of the weather.

Machelor: We have pictures of what you're doing. Mr. Snell would you come up and show me on here.

Snell: On this side of the house is where the barn is going to be located.

Machelor: Do you know what that is?

Snell: I do not.

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Baker: He owns both lots and they've been combined.

Snell: Yes.

Machelor: It looks like a building there.

Snell: Since the survey both lots have been combined and that is no longer even on the map.

Machelor: Your barn is going to be where?

Snell: Located off the house right here in between the properties.

Heuck: How far back from the road way?

Snell: I'm not exactly sure of that number. It's further back than the house. It's over 100'.

Machelor: The only variance you're looking for is the height? And the reason you need the height is because you can't put the door up unless you have that much height? You need the 12' for your boat and you need the 21' in order to get the door up and the pitch. Ryan, where do we get to the SEQRA part?

Parisi: SEQRA will happen if you have gotten enough information from the homeowner or anybody else that's present for the public hearing. Once you've gotten all that information you can close the public hearing, then you will get to the SEQRA part.

Machelor: Have you all had a chance to look at this? Any issues with it?

Parisi: Just for the record what are the other accessory structures or buildings like in that area on that road?

Snell: This is going to be the same as pretty much everything. I have some pictures here of other barns if you would like to see them.

Heuck: Are they similar in height?

Snell: All similar in height or taller. This is across the street. This is at the end of the road. All these pictures are taken from Bridgeman.

Heuck: How tall is this one?

Snell: I'm assuming that that's about a 12' door. I'm not exactly positive on this one but I would think it's very similar to what we are looking to build.

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Masters: At Bridgeman and 31 has a 16' ceiling so it's even taller.

David Snell: I'm Justin's father. From the pictures that you're seeing, I believe there are 7 pictures. We believe 6 of the buildings are taller than the 21' that we are asking for.

Snell: This is across the street. If you look there is a 5th wheel camper in that picture. You can see the building towers over it.

Balassone: Is this a pole barn?

Snell: It's a barn in the back yard.

Masters: Before 2012 the Town of Lewiston didn't have a height limit on accessory structures. A lot of those were prior to the 2012.

Machelor: I will say this Mr. Snell for the record we judge each case individually regardless of what happened before. The Zoning Board's responsibility is to enforce the town code as it exists right now, not what happened in the past and so on. I'm not saying that's an impediment, I just want to make sure that you understand that.

Snell: Yes sir. I completely understand.

Balassone: One door in the front or a couple?

Snell: 1 door in the front and a man door.

Balassone: Should we know anything about the side lot setbacks on this pole barn? Do we have that information?

Masters: It was well off the required side yard. 5' is all that is required because it's so far back.

Machelor: That picture doesn't show the lots connected. Do you have anything further? This is a public hearing Mr. Snell are you finished? Does anybody else have any questions?

A motion to close the public hearing was made by Heuck, seconded by Balassone and carried.

A motion to appoint the Zoning Board as Lead Agent was made by Baker, seconded by Heuck and carried.

A motion to accept the SEQRA as presented by the Town to issue a negative declaration was made by Heuck, seconded by Balassone and carried.

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Machelor: I'm looking for a motion to approve or disapprove this.

A motion to approve the variance request was made by Baker, seconded by DeCastro and carried.

Heuck Aye, DeCastro Aye, Machelor Aye, Baker Aye, Balassone Aye

The next item on the agenda was a request from David Schmidt, 5836 Townline Road, SBL# 118.20-3-22 for a variance from Section 360-38, yards required, from the 20' side yard setback to 11.9' to allow for a kitchen addition. The property is presently zoned R-1, one family residential.

Public Hearing opened.

David Schmidt, 5836 Townline Road. I am asking for a variance for the side yard setback. I would like to enlarge my kitchen. The existing kitchen is 13'x9.5'. We want to add an addition 7.8', about 101 square feet to about a 123 square foot kitchen. My kitchen is extremely small. The house was built in about 1924. When the house was built I sent you the most current survey I had. It was nowhere near being centered in the lot. It would put the variance on the Elm Street side. I did stake it. I don't know if you went by or not to see it. There is an existing wall that protrudes somewhat. I want to go an additional 2' past that to make it worthwhile.

Machelor: How many feet is that protrusion almost 6'?

Schmidt: It would be a 6' addition. It would be coming out 2' from what is existing now on the east side of the house.

Machelor: That protrusion was within the variance at the time it was built?

Masters: It would not have been a variance when it was built because it was before the Town had a 20' side yard setback.

Machelor: So it's the same type of problem we just dealt with.

Masters: Kind of yes.

Machelor: He is asking for a variance from the current code of 1.7'?

Schmidt: I had 1.7' but I was corrected because I thought it was 15% of your side yard but being on a corner lot it's a 20' setback which puts it according to what the notice was, it would be about 8.1.

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Masters: It's not really accurate because it wasn't 20' when the house was built. According to the law now it would 8.... variance but at the time the house was built the rule wasn't 20'. That's why I asked him to explain it to the Board because it wasn't really cut and dry.

Schmidt: My entrance to the kitchen, I have no place else to locate it on the property. Where the kitchen door is it's only about 5' from the existing garage.

Machelor: Everybody has this in their packet. The extended piece is right now 14' from your property line right?

Schmidt: On the east side of the house, bottom of the page, that is 14.5 wide.

Machelor: Come on up. What I'm asking you this dimension here, is 14'. Your new.... will come out like this. What is that distance?

Schmidt: 7'.

Machelor: You're going to be 7' from the side yard.

Schmidt: I'm going 2' past this dimension here, 2' past that.

Machelor: That would mean that you're still 12' from the property line? Does that make sense?

Schmidt: Yes.

Machelor: Essentially he's asking for a variance from the current code of 8' from 20'.

Schmidt: Yes.

Machelor: Instead of being 20' you're going to be 8' from your property line?

Schmidt: I'll be 12' which will be an 8' variance.

Machelor: Really that is what we are approving. We are approving an 8' variance from a code....everybody clear what he is asking for? He's talking about a property line that is not near a neighbor anyway. It's a property line of really the right-of-way.

Schmidt: My neighbor's house to the west of me, I can stand on my property and touch his house.

Machelor: I was looking at that. We have a drawing here. What house would that be that you are able to do that?

Schmidt: His fence is right on the property line. My property line is right here.

Machelor: It's not that property line that is the issue. The distance we are talking about is to the right-of-way. The same situation as before. Your house was built not in compliance.

Heuck: Non-conforming.

Machelor: Anybody have any questions?

Being that it was a non-conforming situation when it was built; there was no zoning ordinance that would regulate it and being that it's not really over significant a motion to approve the variance request was made by Heuck,

Machelor: We have a motion on the floor to approve the variance which I don't know if it's stated exactly the same in the paperwork that way, we are approving it 8' from the property line and the variance itself is 11.9' according to the public notice, instead of 20' it's 12'.

Motion seconded by Baker and carried.

Heuck Aye, DeCastro Aye, Machelor Aye, Baker Aye, Balassone Aye

Masters: Sorry for the confusion about the 7:00 versus 6:30 but the Town Board said 7:00 at Mondays meeting so half the paperwork said 7:00 and half said 6:30. Chris sent out an email to try and make sure everybody knew it was 6:30.

Parisi: It's always 6:30.

Machelor: I think that when we talked about this last time we had a vote and we voted on 6:30 but it was my impression that it wasn't necessarily every time going forward? If that's what we want to do it's fine.

Masters: The Planning Board is 6:30. It just makes sense to leave this one at 6:30.

Machelor: I prefer to have it at 6:00 but we have 1 member that can't necessarily get here by 6:00 so we will keep it at 6:30. Any further business?

Heuck: We should welcome aboard the new Board member.

Masters: In case you all didn't know Damon DeCastro Jr. got appointed to replace Anita on Monday night.

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Machelor: Pat was already an alternate?

Masters: Pat was already an alternate yes.

Machelor: Thank you. Welcome. I'm sure you will do fine.

Masters: There is now a new problem with Marge. Because Marge is a town employee as the Town Historian it has come out that she might not be able to be an alternate and be the Town Historian both.

Machelor: Did we get a status change?

Masters: No not yet. This is all new information within the last couple of days.

Machelor: We might become Town Employees ourselves?

Parisi: It doesn't have to do....you're considered a public official. Whether you're an employee or an independent contractor of the Town you are a public official. That is a separate issue. Because she was appointed Town Historian as a public official our Town Code says that no public officer can serve on the Zoning Board of Appeals. Because Town Historian is considered a public officer it's a conflict under our code.

Machelor: So you're going to give up being a Historian right?

Maggard: No. I was an alternate, Pat was an alternate. We didn't get asked.

Machelor: I'm just kidding. We like having you here. You can certainly come anytime you want.

Maggard: Thank you. I can't serve two areas. I really enjoy the Historian more so than the Zoning Board.

Machelor: Why did we ever have 2 alternates?

Heuck: That was the way it was set up a long time ago.

Maggard: That was Anita's because of a lot of conflicts that was happening.

Masters: In years past we had it where we couldn't have a quorum. When Mike Johnson was Town Councilman at that time years ago they added that alternate language in there to solve that no quorum scenario.

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Machelor: What are they going to do now accept her resignation and appoint another alternate?

Masters: I'm assuming.

Machelor: So you are on to it Ryan right?

Parisi: That is what should happen.

Machelor: Sorry Marge.

Maggard: Don't be sorry.

Parisi: She is the Town Historian. She moved on to bigger and better things.

The next meeting will be January 10, 2019, at 6:30 P.M.

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

Respectfully submitted,

Sandra L. VanUden
Zoning Board Secretary

Norman Machelor
Zoning Board Chairman