

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – November 12, 2020
ZB 2020-11

Present: Conti, Heuck, Machelor, Maggard, Muzzi

Presiding: Norman Machelor, Chairman

Machelor: I would like to call the meeting to order. I would like to ask all of those who can stand to stand for the Pledge of Allegiance.

A motion to approve the minutes of October 2020, was made by Conti, seconded by Heuck and carried. 1 abstention

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to grant or deny 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 of the Code to continue the project or denial to prohibit a project as presented.

Public hearing opened

Dan Reynolds, 4815 Creek Road, SBL# 101.08-3-16, requests a variance from Section 360-185D, Accessory uses and structures, to allow for a third shed on the property. The property is presently zoned R-1, one family residential.

Machelor: Is there anyone here to speak to this? Please come up and address us with your name and address.

Good evening ladies and gentlemen of the Board. My name is Danny Reynolds, I live at 4815 Creek Road. I got engaged in 2002 to the woman that owned the home. In 2003 I moved in to the home. There were 2 sheds already on the property when I met her. She had them installed when she owned the home. Unfortunately, in 2007 we got divorced and we did a quick deed, we had the same bank and I bought her out of the house. The 2 sheds that are there have been there for 19 & 20 years. Three years ago, I had an addition put on the back of the house and an above ground swimming pool put in. I spent an extensive amount of money on the yard and the house. Of course, all the inspections were done by the Town, all with permits and architect.

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The last inspection was done by Tim Masters who toured the back yard with me and saw the sheds and the pool and everything. He commended me on what a beautiful job I had done. Thank you very much. I've had problems with the one neighbor running a landscaping business out of the side of his house. His employees are out there at 6:00 in the morning loading equipment, drinking coffee, waking me up. I've complained over the last couple of years to Chris and Chris has talked with him. It never stops. Now the gentleman brings home his customer's grass in big clear bags. He stacks 10-18 bags of grass on the road and sometimes the garbage men will not even take it. It's sitting out there in the sun and it smells horribly. It sits out there for 2 weeks at a time. Not too long ago we had a horrible smell in the back yard, I thought it was coming from the dog. We couldn't figure out where it was coming from. We couldn't even sit in the back yard at the pool it was that bad. Fortunately, I have a fishing boat in the driveway and climbed up on my fishing boat and looked over and on the other side of the fence is 18 bags of decomposing grass that's been there for weeks. The smell was unreal. I called the neighbor and he apologized, he said he would move it. I know my daughter tells me it stinks.....he just moved it to another place in the yard. A few days later I text him again which I have the texts and said that's not good enough. I can't even have a picnic in my back yard, this is reeking, nobody should have to put up with it. I called Chris and Chris said he would take care of it. Two days later Chris called me and said I talked to Jason and he was not going to leave the grass out there anymore. I told him he's only allowed one commercial truck and one trailer. But there are always 2-3 tractors, trucks and then Chris said to me, what's up with the 2 sheds? I said what do you mean? He said Jason is complaining that you have 2 sheds. I said there has always been 2 sheds. As a matter of fact, the shed behind the garage, last September, one year ago this September was flooding all the time so Jason is a landscaper, I had him come over and he said the way the water is running in your back yard, I advise you to rip this one down, it was a metal one from Sears. He said put in 1.5' of stone, have the new shed built and then I'll bring in 14 yards of top soil and we will fix the yard all up. So, we did that last September. It cost me \$10,000. It's beautiful. Because I complained about the garbage, he complained to Chris that I had 2 sheds. Chris said to me Danny I gave you the permit for the new shed last September but I didn't see on the survey the sheds. I said I didn't know they weren't on the survey because when we did the quick deed in 2007, we didn't have to do a search and survey, we didn't have to do any of that. So, there was no reason for me to ask, which at that time it was my wife's house for the survey. I explained to Chris, Chris they have been there 19-20 years before I even bought the home. There has never been a problem. It's a retaliation of me complaining about the business and the garbage. Chris said I see that, I understand. That's why I'm here because I guess Jason complained about the sheds. His wife gave me a letter that I can give to you and she's explaining in this letter to you that Jason is doing this totally out of retaliation for the garbage and the trucks in the driveway. The shed has never been a problem. They moved there about 7 years ago. There has never been an issue with the sheds. The other neighbor on the other side has never had a problem because that was my wife's aunt. That stuff was all there before I met, it was there before I moved in to the home and all I've done is improve everything. That's why I'm here. The shed cost me \$10,000., I have a picture of the shed that was replaced. They are almost identical and all I did was

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replace the shed that was there. They are 2 carriage houses. I have pictures of them if you would like to see them. That's totally it.

Machelor: Questions?

Heuck: You also have a cinder block garage back there?

Reynolds: Yes, the garage is cinder block, it's a two-car garage, detached and behind the garage is the one shed that I replaced. It was a metal shed that kept flooding. That shed was ripped down last September and then I had the Amish come in and build the new shed. The other shed is a carriage house. Its over in the corner. It's all butted up with fences. That one was put in in like 1999.

Conti: The one behind the garage, is that attached to the garage?

Reynolds: No, it is not.

Conti: There is separation between the 2?

Reynolds: There is 4'. Chris said because it was cinder block you had to be at least 4' so when they built it, they built it at least 4' away.

Machelor: When was the garage built?

Reynolds: The garage was built with the house which would have been 1957.

Machelor: So, it's been there for the same time.

Reynolds: Yes, 1957.

Machelor: You are aware why you are before the Board right? You are aware that you can only have 2 accessory buildings?

Reynolds: I wasn't aware until Chris told me on the phone that day.

Machelor: It's sort of irrelevant that you took one down and put one up, obviously if you had taken the broken one down and just left it down you wouldn't be here because you would have had 2 buildings, your garage and your shed. The reason this is a problem is now you have 3 buildings.

Reynolds: I was totally unaware that there was an ordinance to that. I had no idea.

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Machelor: I agree with you. I don't know what to say. Obviously if the Town has gone to your property and see what they see, it's not relevant why your neighbor called the Town. We really can't consider that part. All we have to do is consider whether we are willing to vary the Code and let you have 3 accessory buildings rather than 2. That's the whole thing.

Reynolds: Because I was unaware of it, obviously I've never been in that position before, I had moved in to Lewiston in 2003. When Tim Masters came and did the final inspection on the big project on the home, he walked up to both sheds. He checked the gates, he made sure they had automatic locking gates, alarms on all doors. He never brought it up to me. He commended me on what a beautiful job and how nice the yard looked.

Maggard: Is there any way you could take the 2 12'x20's and put them together to make one?

Reynolds: No because there is no way to get a truck or tractor back there to move them. They had to be built on the premise because I had a 6' vinyl fence just 3 years ago when I did this project put up on both sides of the yard for the privacy of the pool. There is not enough room for a truck to go back there. That is why it cost me so much to have the sheds built because they had to build them on the premise.

Maggard: Did you get a permit when you went to build?

Reynolds: Chris granted the permits and told me it had to be 4' away from the garage because it was cinder block. I have pictures of everything if you would like to see it?

Maggard: Yes, I would like to see it.

Reynolds: This is the letter from Jason's wife. I wanted to put on the first picture, the shed behind the garage, that's the original that came down and then in the other pictures you will see the other ones.

Muzzi: You just mentioned there was 4' between 2 structures?

Reynolds: Yes, it had to be 6' I think if it was a wooden garage, but because it was cinder block, he said it could be 4'.

Muzzi: Historically on the survey you have 2 on the one side and 1 on the other, which is the oldest of those structures?

Reynolds: One is on just the planks of wood they built it on and the new one is on 1.5' of stone so it wouldn't flood anymore.

Machelor: Any further questions from the Board? Hearing none, I'm looking for a motion.

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A motion to grant the variance request based on the Board's discussion and the situation with the shed being behind the garage and getting the permits properly and everything else that went on, the Zoning Board of Appeals determines that the benefit of the variance to the applicant outweighs any detriment to health, safety and welfare of the community was made by Conti, seconded by Muzzi and carried.

Conti Aye, Machelor Aye, Maggard Aye, Heuck Aye, Muzzi Aye

Reynolds: Thank you very much everybody.

The next item on the agenda was for Robert Burns, Dickersonville Road, SBL# 75.00-2-7.11, seeking a determination from the Zoning Board of Appeals regarding unlawful growth of weeds as it pertains to Mr. Burn's berm on the south side of his property. The property is presently zoned RR, rural residential.

Machelor: It's a public hearing, please state your name and address for the record.

Don Kneepel, I live on the south side of Burn's property. There is no sign that tells what the property, everybody has to have a sign on their house now. His isn't marked so I don't know. Whether that's a concern or not I don't know.

Conti: That is not in front of us tonight.

Kneepel: It's a basic problem with these berms that you don't keep it cut. He has just let it go to field and it's a residential area. I live 25'-30' over is my house. The first thing is it does is decrease the value of the property when you have something like that. Somebody comes to look at your house they ask what is this berm here? Maybe it's a pile of dirt I don't know. The next is it's a fire hazard because you let things grow, weeds, trees, if it catches on fire, we have a problem. That's what this is. Another thing is it attracts rats because you have a dirt pile out there. Rats like to dig in the dirt. Woodchucks, racoons, foxes and they all carry rabies or any other disease. That might be what's behind the virus we're fighting now is the wild animals who knows. In the spring time this here particular berm attracts water. There is 6-8" of water laying alongside the berm from April, then you have mosquito problems when you have water standing. That's part of the problem. You have to maintain things or else they get away from you. When you have a pile of dirt you don't have a water runoff. It just traps it in there. If you put a pile of dirt alongside your house, you're going to get the water backed up to it. That's another problem. I can't see any useful purpose to have a berm between residential property unless you are trying to harass somebody. I don't know. I would like to know if you people that are sitting up there, would you raise your hand if you'd want this kind of problem next to your house. Raise your hand.

Seaman: They are not here to be asked the question.

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Conti: What is in front of this Board is not the fact that he has a berm at all. What is in front of the Board is a determination as far as cutting the grass or the weeds on the berm, not the berm itself. The berm itself is there and it's legal. That's not what is in front of us tonight. It's only the grass on the berm.

Kneepfel: The person don't live on the property.

Conti: That's not what is in front of the Board tonight.

Kneepfel: How do you get permits for people that don't live on the property and they live in Niagara Falls and they bring their junk and everything else in on the property.

Conti: I understand what you're saying. That's not what is in front of this Board.

Kneepfel: I pay taxes. A good share of taxes.

Conti: What is in front of this Board tonight is just the grass on that berm.

Kneepfel: You have all the answers.

Conti: I don't have all the answers but I'm just telling you what's in front of us tonight. It's all we are here to rule on.

Kneepfel: If they don't get this figured out. What's he trying to do?

Conti: I think we need to hear from Mr. Burns at this point so we can determine.

Kneepfel: Let's see what he has to say.

Good evening ladies and gentlemen: I see on the complaint in the letters that were mailed out, there was 4 letters mailed out to neighbors. The only one that is here today is the one that's always complaining about it. He's always harassed me for years over this berm. Alongside that ditch where he's talking about water, he's got drainage from his property running to that ditch alongside that berm. I have pictures of his property of the way it looks with his weeds on it. If you would like to see them, I will show them all to you.

Machelor: I think what we're trying to do is trying to determine what is relevant here. The only thing that's relevant is whether or not you should be required to cut the growth on the berm. That's it. His actions.....

Seaman: Let me ask you a question sir. What is the size of that piece of property?

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Burns: Almost 45 acres.

Seaman: My name is Tom Seaman, I'm the Attorney for the Zoning Board of Appeals. I'm here to advise them as to how they do things legally in the Town of Lewiston. I reviewed this and it's my position that legally the Code Section that the resident has been cited with is not applicable to a piece of property that is 45 acres. It's only applicable to a piece of property that's under 2 acres. The violation you've been served with sir is not a proper violation. That's my legal position. That is the legal recommendation that I am making to the Board and as such I'm going to recommend that the Board make a determination that the Town's Code that this violation is based on does not apply to this parcel and therefore the violation must be deemed null and void and withdrawn. I'm asking one of you to make that motion please.

A motion to deem the violation null and void and withdrawn was made by Heuck, seconded by Conti and carried.

Conti Aye, Machelor Aye, Maggard Aye, Heuck Aye, Muzzi Aye

Public hearing closed.

Seaman: Do you understand what happened sir?

Kneepfel: I didn't hear.

Seaman: The Town doesn't have the authority to tell this man to cut down those weeds in that location on that berm.

Kneepfel: What do you have to do to get it straightened out then?

Seaman: Change the Town Law.

Kneepfel: That's a residential property. Does the Town say he doesn't have to put a sign out in front of his residence in case somebody gets hurt and they have to have an ambulance or emergency vehicle? He don't have that.

Seaman: I don't know what that issue is sir. I would have to do some research on that. I don't know what it is you're referring to.

Kneepfel: Ask him. He don't have the property identified.

Burns: If you keep harassing me I'm going to hire a lawyer and sue you. I'll tell you right now. I'm tired of your bologna.

Machelor: Let's have order.

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The next meeting will be December 10, 2020, at 6:30 P.M.

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

Respectfully submitted,



Sandra L. VanUden
Zoning Secretary



Norman Machelor
Zoning Chairman