

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York

Thursday – April 15, 2021

ZB 2021-4

Present: Conti, DeCastro, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

Machelor: I would like to call the meeting to order. If you can stand, please do so for the Pledge of Allegiance.

Pledge of Allegiance

Machelor: There is a substantial amount of minutes from the last meeting. I would like you to take some time and look through them.

A motion to approve the minutes of March 11, 2021 was made by Maggard, seconded by Conti and carried.

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

The first item on the agenda was a previously tabled variance for the Estate of Joseph Deck, SBL# 102.13-1-80 & 102.13-1-81.

Michael Dowd, Attorney for the Estate of Joseph Deck.

Machelor: Mr. Dowd, we've been through this. This is your opportunity to present a view words what you're asking the Board to do.

Dowd: What we want to do is combine into a single parcel, two parcels that are located in the Oakhill Estate Subdivision. We are also looking for a variance on road frontage requirements so that we can access that parcel off of Oakhill Drive. If you recall during last month's meeting it was tabled because concerns were raised by a resident regarding our ability to use that road and some inquiry why it made sense from a cost perspective to access off of Oakhill versus Sullivan Court below. You asked that I provide some estimates and I provided 2. I'm happy to answer any further questions but I would suggest that my correspondence indicates that it is cost prohibitive. At a minimum \$52,000 to put in a driveway versus black topping over an existing stone base driveway that's already there. Secondly the concern about our ability to access the road, I did provide the Board with a copy of an invoice. Mr. Deck has been paying the same Homeowner's Association fee as everyone else in that neighborhood even though his house is not there, not plowed, he doesn't get any benefit. He's been paying it for years. He

certainly has a right to access off of Oakhill Drive. I'm here requesting that our access with the 27' be granted.

Machelor: We should have voted to un-table this before we proceeded.

A motion to un-table the variance request was made by Conti, seconded by Maggard and carried.

Machelor: I want to say 2 things right up front. Whether or not the driveway is going to cost a certain amount of money is not before us, you know that?

Dowd: I was asked to provide this information.

Machelor: And you did, that's fine. I just have to say we don't get involved in financial things. We don't make decisions based on what the expense is to the owner. The second thing is we don't rule on combining the property.

Dowd: Understood.

Machelor: That's really not our thing either. Finally, what we've been asked to do and this isn't the throw away part, we've been asked to allow a 25', you say 27' entrance to that road instead of the 75' that is required in the Code. I thought it was 24'.

Dowd: If I may point out the current configuration of the 2 lots were approved by the Town providing 33' access roads off Sullivan Court. I don't suggest that there is a large difference between what I'm asking for and what's already permitted. Further in my correspondence which I submitted to Mr. Seaman, there is specific Code provision I suggest that since this is a pre-existing lot with road frontage it doesn't have the required 75' that it's exempt from that 75' rule in any event. I just want to bring that to the Board's attention. We came here frankly to try and assist the Town by saying we will give the Town more than what they have by providing a specific language in our easement that we won't put buildings on the easement. That if there is a repair necessary the homeowner will eat the cost of having to replace or repair his driveway. Those are protections the Town does not have right now whether it comes off of Sullivan Court or Oakhill. I just wanted to bring that to your attention. We're really not looking for much of a variance and I'm not even sure a variance is necessary, but I'm here to try and cooperate with the Board.

Machelor: I hear you. I think from my point of view and from the Board's point of view it's not difficult for us to look at it in its narrowness that what we've been asked to do is a pretty narrow thing. We're not equipped to rule on whether or not you can connect yourself to Oakhill's Road.

Seaman: You are equipped to put conditions on your decision.

Machelor: Whether you satisfy the requirements of the HOA by paying your dues, that's between you and the Homeowner Association.

Conti: Does everybody in that area including Sullivan Court pay HOA fees?

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Dowd: I don't believe there is an HOA for Sullivan Court but I can't speak to that specifically. I can only say that my client who has been a member of that HOA since its inception paying dues and it is our problem but I cannot imagine that we would have any difficulty with the HOA trying to deny us access after paying dues for so many years. That is our issue. We're just seeking again a variance that I'm not even sure, I'm not trying to be argumentative, I'm speaking only to your code that a variance is even required.

Seaman: That is a different topic that can be addressed in a different manner. It can't be addressed before this Board.

Dowd: I appreciate that Mr. Seaman. I guess the point I'm making is I don't want to have to go down that road. We're onlyfor right now we have 33' not 75', for each lot. We have 24' and again without getting in to specific code provisions New York State Law, the Town Law provides that if you don't have required frontage and you need access for emergency access, the minimum is 20'. We certainly exceed what the New York State Law is regarding access to the back lot. It's not referenced in my correspondence but I would be happy to provide that if it's requested. Again, we're hoping that this Board will grant this variance.

Machelor: We talked about this before as Joe pointed out, essentially would 66' were open for that to happen, the double driveway from those 2 lots. What the Board did at the time was to allow 33' instead of and 66' for the whole piece instead of 75'. You could say they went from 75' to 66'.

Dowd: At the time the lot was established it was originally one lot. That split of those two lots occurred later on when Sullivan Court was created. I believe it was a large lot that they later subdivided in to two portions. That 66' was to be a road. It was a single parcel. When the plat for Oakhill was laid out and filed the original plat it provided for that 24' access off of Oakhill. Sullivan Court didn't even exist was there. It was originally contemplated that the 24' was going to be the access to that lot. The fact that Sullivan Court later on provided a different kind of access although much more difficult.

Machelor: What was the configuration of the lots when it was approved to have two of them go to Sullivan Court?

Dowd: At that time, before Sullivan Court was even laid out, the only access to that was off of Oakhill. Sullivan Court didn't exist. The only way to access that lot prior to Sullivan Court would have needed to go off that 24' that we're talking about right now.

Conti: That lot was set up for Oakhill prior to Sullivan Court is what you're saying? Why isn't it an Oakhill address right off the bat then? The way we're looking at it right now it's a Sullivan Court address.

Dowd: When Sullivan Court was created and there was a 66' wide area, I believe after Sullivan Court was created that 66' parcel went up to a single big lot. It was also serviced by the 24'. At some point when Sullivan Court when in there, the addresses were able to be assigned to it. Before Sullivan Court was there, there were no Sullivan Court addresses. It would have only been the access off of Oakhill Drive. I don't know what year Sullivan Court was built but it was after Oakhill Drive.

Conti: Gary, you were on the Planning Board back then do you remember any information off of that?

Heuck: Too many years ago.

Conti: We would have to look up information as far as what you're saying on that. My big concern right now is the fact that you're saying that was a lot set up for Oakhill Drive initially, why did they change it to Sullivan Court? There had to be a reason for it that they did it that way.

Dowd: I can't speak to Mr. Deck who passed away. I believe it was done by him. Why it was done that way I really can't speak to that. Originally it was laid out to have access to Oakhill.

Conti: Since then and I'm not sure when they put the water mains and the sewer and we can talk about that in a minute, when Oakhill was completed before they did Sullivan Court, is that where the mains automatically went or were those put in later?

Dowd: My understanding is those were put in before; those are pre-existing sewer lines and water lines put in before Oakhill. In fact, Oakhill goes over the lines. I did meet Mr. Zahno at the site and we were able to spend quite a bit of time and were able to show that there is enough room south of the water line which is the big concern that we could then go up and access perpendicularly and cause no more access perpendicularly and cause no more adverse effect on the water line coming off of Oakhill than we would off of Sullivan Court.

Conti: What about the sewer line?

Dowd: We would go over the sewer line and again we are offering to provide the Town with the assurance that in the event there needed to be repairs we wouldn't ask the Town to replace the driveway which is not something the Town has now. I think that's quite a bit of value. For example, if we were forced to go up off of Sullivan Court and we put two driveways there we wouldn't be here asking you for this permission. If that sewer line failed or that water line failed and you had to tear up that driveway, the Town would have to replace it.

Conti: With gravel. There is nothing in the Code that says we have to replace what the material was that they tore out.

Zahno: I know we don't replace concrete. I believe it's asphalt as necessary.

Dowd: The point being it would have to be repaired by the Town. If we are offering to take care of that burden.

Conti: I also noticed that there was an advertisement for that lot, that you're selling the lot again, is this back for sale this lot?

Dowd: We unfortunately, my client has lost 3 buyers because they've come to the Town and they've been told it would be difficult to get access coming off Sullivan Court or an inability to cross over the easements as it laid out. We've lost 3 buyers. It's quite unfortunate.

Conti: You're selling it as one lot still, correct?

Dowd: I think they would do it as both if they get the right price. I think one lot is probably what they are trying to accomplish to just get rid of the problem. You don't want to sell one and then wait around and try to sell the other one especially because my understanding is crossing it has nothing to do with it but to say to someone you can do this but it's going to be \$60,000. Just to get to your house on a driveway would be a pretty poor selling point.

Machelor: Can you come up a minute? What we're supposed to see is this lot the way it is like this was a lot.....

Gentleman: Can I come up too?

Machelor: Sure. When the plot was submitted to the Town back in the day for the subdivision, they permitted this lot to have, that's all the access it had from the beginning of time.

Dowd: From Oakhill subdivision. It wasn't until this was later put in that access to the other road because it didn't exist.

Machelor: Does somebody live here?

Dowd: I think there is a house there. This is pavement here. That's a large turn around to allow access for emergency vehicles.

Machelor: My issue really is did the Town approve a subdivision plan that included a lot that was only accessing the subdivision by 25'?

Dowd: I would point out again, that's the tax map. If we look at the tax map before Sullivan Court was there, that would be a big lot and it would probably only show the access from there. That is how it was laid out.

Machelor: It wasn't the case that these 2 were combined at one time on Oakhill and that this is a left over remains of somebody purchasing this lot and essentially land locking the second owner.

Dowd: I can't tell you when that parcel came off, if that was part of Sullivan Court and this is like a bigger single parcel. I didn't represent the Deck's. That was many years ago.

Machelor: This is still an open hearing. Does anyone else want to speak to this?

Gary Donohue, I'm here on behalf of Dave Carpenter, the neighbor that was here last time when you guys tabled it. He couldn't be here. He's out of town. I just wanted to renew the objection. He is an adjoining land owner. He is a member of the HOA for Oakhill.

Seaman: Are you an attorney?

Donohue: Yes.

Seaman: I do have Mr. Carpenter on the phone. Mr. Carpenter can you hear me?

Carpenter: Yes, I can hear you.

Seaman: Out of the goodness of my heart I decided to try and involve him as best I can through means of telephone. I'm not sure how much he can hear but he is present to a certain extent. I just want to clarify for the record that you're representing him as his attorney?

Donohue: Yes, sir I am. Thank you. He is here by phone, great. As I understand it, the request is to allow a driveway over this narrow section of the Deck property that touches the Oakhill right-of-way. There is a lot of problems with that, first and foremost the definition of a lot in the Code is with frontage on a public road way. That right-of-way is obviously not a public road way. I understand that the Deck family has been paying to this HOA. I'm not sure how that happened because I've seen the documents. That lot is not a part of the HOA. That's a separate fight. It's not really before this Board. You would essentially be allowing the driveway to a lot and over property that they are not a part of. You're allowing a lot over private property. As I understand it there are not just David Carpenter but other members of that HOA that would object and it's not a large HOA, that would object to that additional traffic and the driveway.

Machelor: This is Mr. Carpenter's access to his property?

Donohue: Yes, it is.

Machelor: How wide is that?

Donohue: I don't know.

Machelor: It's not very wide.

Donohue: I would 100% agree with that.

Machelor: We're talking about the same thing right, we're talking about somebody that has a lot, not on a public road, smaller than required and certainly not 75'. Mr. Carpenter is doing the same thing that this guy is trying to do.

Donohue: I understand that sir but what I'm saying is that when this driveway was put in, this whole development was approved. This lot was not a part of that. I have a map that the whole development was approved as such. This was not part of it. When this development was approved, they also approved smaller driveways off of Sullivan Court. Now they are saying they don't want to use that as a public road way as I understand it. They are asking to not use what has been previously granted as a public road way but to go over a piece of private property.

Conti: When you say a piece of private property?

Donohue: The HOA.

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Conti: That road is owned by the HOA?

Donohue: It is. And it's maintained by the HOA.

Seaman: As I had mentioned at the last meeting, among the conditions that could be imposed if you choose to approve this would be a condition that requires prior to a building permit being issued demonstration that they have access to that private road way.

Machelor: In other words, they set it up with the HOA.

Seaman: You can make your determination and condition it on them demonstrating they have access to the private road way and let that portion of their private fight play out in a different arena.

DeCastro: Last time we were here we discussed with Mr. Carpenter of possibly putting in a bid to buy that property in a means to take care of this completely. As his attorney have you spoken to him with that? Has any offer been made?

Donohue: I appreciate that question. I was just hired yesterday. The reason was he thought perhaps this would get tabled again. When he called, they said it would not be tabled again, you have to have someone here. I have not had a chance to explore that.

DeCastro: Are you familiar with the Oakhill HOA?

Donohue: Just through him and the documents. I've reviewed the documents for the HOA.

DeCastro: In those documents was there anything about possibly refunding 20 years of HOA fees if he's not part of Oakhill?

Donohue: That seems to make sense, if you're paying for years, you should get that money back if you're not part of the HOA or a portion of it. I don't know.

Conti: Mr. Carpenter can you hear me?

Carpenter: Yes, I can hear you.

Conti: Was there any discussion about buying that piece of property now that it's back for sale?

Carpenter: Discussion with who?

Conti: With the Estate of Joseph Deck, who is selling the property.

Carpenter: I've had no discussion.

Conti: Is that a possibility?

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Carpenter: There's always a possibility. Everything....it's all about the price. I'm not saying anything definitive right now.

Seaman: You have not engaged the other side to determine whether or not there is any type of price what so ever would be affordable to you, is that correct?

Carpenter: I would say that in a separate matter related to a bunch of trees getting knocked down on both of myself and Mr. Deck's properties that the topic did come up at that point. Hey why don't you just buy this property off of me and then never have to worry about anything. At that point I would call it an informal conversation between the 2 of us and next thing I know there is a potential buyer, he backed out because he didn't want to build a driveway up my front yard and then those conversations just fizzled out. I haven't spoken to Mike in a while.

DeCastro: Does he know how wide his driveway is in comparison to the one that we are here for?

Seaman: The question sir is do you know how wide your driveway is and the frontage on your property as it fronts Oakhill?

Carpenter: Not off the top of my head. If you looked at the other properties in the subdivision it would be similar. Some properties are actually smaller.

Donohue: I have not seen what Mr. Dowd submitted. It sounds like the Board is not going to consider the financial aspect anyways but if the Board was willing to table it again, I would get something formal from the HOA in terms of what their position is on it.

Machelor: As our attorney pointed out, if we said yes, we presume it upon getting connected to the HOA.

Seaman: I don't recommend that you not table it on some other Board coming to some other decision at some other time in the future. Make your determination and you can condition it on that.

Machelor: Anything further. Is there anyone else here that would like to address this?

Seaman: Mr. Carpenter do you have anything additional you would like to add?

Carpenter: No, Gary spoke on behalf of me and everything I would have mentioned myself. Thank you.

Donohue: I think to confirm what I think happened last time was Mr. Carpenter showed you pictures, this driveway is literally a matter of feet from where his kids play set is and things like that. If the Board already has that information, I'm not....

Machelor: Yes, we do.

Conti: I would like to hear from Mr. Zahno. I know he met with Mr. Dowd over the property. I would like to hear his take on the meeting.

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Zahno: I met with Mr. Dowd. We were up there for quite a bit. It will not be over the top of the water line but it will still be in our right-of-way. It will be crossing over both of our water lines. I feel if it comes off of Sullivan Court it's only going to go over one of our water lines.

Machelor: Can you show me?

Zahno: If they come in this way, they will cross over the 8" and cross the 16" to go up there.

Dowd: The big concern is to run it parallel right over the top of it. Either way you have to cross and I think the 16" line and high-pressure lines, are the real concern.

Machelor: This one will have to cross the 8" and then the 16".

Zahno: Correct.

Conti: What about off of Sullivan Court?

Zahno: If they come off of Sullivan Court, they probably only have to cross the 16". They cross the 16" regardless. My issue is as I explained to him as well, it's not going to be over the top of it. Even though it's along side of it as I explained to him if it ever breaks, I'm digging through concrete because I know it's not going to be a stone driveway. I know it won't be black top. I know it's going to be in the middle of January.

Dowd: Again, we've agreed that we would put an easement in with the Town that would make it the burden of the property owner to pay for the repairs if that were to happen and to not build anything, not put any structures over that, no garages, no sheds....

Conti: Which they couldn't do anyway even without this.

Dowd: People do it all the time, they put sheds inside easements that it's not over the sewer line and everyone leaves them alone. I'm just saying we are going to put in an affirmative document on record that says we won't do this, that we will make the repairs which again is more than you're going to get from any other resident. Virtually every house in the Town crosses a sewer or water line.

Machelor: Any other questions from the Board?

Maggard: Is this going to be detrimental to the nearby other neighbors?

Dowd: Not at all. Whatever home goes in there is I'm sure will be a very lovely home. We're talking about one car or two cars, a single-family driveway. I don't see it being detrimental at all. It would be good for the Town because someone will probably build a pretty expensive house and it would help with the tax base and increase the value of the property.

Maggard: Last month when I listened to Mr. Carpenter, that was not the case for him.

Dowd: That may be true but Mr. Carpenter I suggest.....if I may suggest this, there's a lot of neighborhoods in our community where people have small kids and they are out on skate boards, sleds and they're playing. It's no different for Mr. Carpenter and any other resident in Town that is going to have a child that's going to be out in front of their house. Second of all I would suggest that if Mr. Carpenter really doesn't have a right frankly to have his kids sledding over their driveway just like no one would have that right over your driveway. He may not like the idea that there might be a neighbor and there are a lot of people in this world that just don't like the idea of having a neighbor. He has a beautiful set of woods next to him but it's a piece of property that should be developed. Again, if he came off of Sullivan Court with a driveway there, I would suggest you just play with neighbors in Sullivan Court that have their kids out there sledding on that hill. I think it's really a red heron for someone that just doesn't want to have a.....

Maggard: We can't say that. We can't say he doesn't want it.

Dowd: He expressed his opinion that he felt we shouldn't be.....

Maggard: He was concerned about his children.

Dowd: I understand that.

Maggard: It's on a hill.

Dowd: It's like any other homeowner that lives on a hill or lives in a neighborhood. We're not endangering his children. He wants to put a driveway in next to a neighbor's house.

Maggard: The other question I have is whether the request would have adverse physical or environmental affects?

Dowd: Probably less, I would suggest because if you're going to put that driveway in on Sullivan Court, if you were to look at the estimate, it's going to require all kinds of drainage and all kinds of earth movement and you're going to have to cut in to the side of the hill and you will be using a lot more black top. Really all we are talking about is a driveway and a house. There's no adverse environmental consequence no matter where you put the driveway. It may be worse because of drainage and runoff on to Sullivan Court.

Maggard: Yes, very steep.

Donohue: Can I speak to that really quickly? As I understand it the Deck lot touches the right-of-way by 24.88', something like that, just under 25'. The Carpenter lot is right next to it. So, the combined, these driveways will literally be right on top of each other. The combined opening is going to be less than 50'.

Seaman: What is Carpenter's opening then?

Donohue: It's less than 25'.

Seaman: Less than what Deck is asking for.

Donohue: Correct. Mr. Seaman you tell me, but I think this is the answer.

Dowd: That is the road frontage that Carpenter has.

Donohue: These driveways will be right on top of each other.

Maggard: Would there be 30' between them?

Donohue: No. I would be surprised if there is 5'.

DeCastro: Did Mr. Carpenter get a variance to have a driveway that narrow?

Donohue: It was all part of that subdivision that was built at the same time. Everybody's lots were laid out and it was all approved.

DeCastro: The character of that neighborhood could be narrower than normal driveways?

Donohue: That one was part of it. I have a drawing I can show you of the various lots that touch the right-of-way. This the right-of-way here. All these lots are touching were put in at the same time. These 2 as you see don't have a number on them because they were not assigned as part of the development.....

DeCastro: This is Mr. Carpenter's lot right here? He has a narrow lot that would adjoin to this if the road were put in but that is less than 25' already.

Machelor: Mr. Seaman, are we being asked to approve this or disapprove it based on the fact that they're going to combine those 2 properties? Is that part of our.....

Seaman: That is not the request that is in front of you. That's a condition you could place on it if you wanted to.

Machelor: That the approval or disapproval is with 2 lots exiting in that one place?

Seaman: You would have to ask Mr. Dowd. I suppose.....as I understand it the application before you is that they intend to join both lots. One of things I suggested to you at the last meeting was that you could condition it on that to ensure that it in fact happens because that is the intention of the applicant. As of right now there are 2 separate lots. You can condition it on that but Mr. Dowd can speak to that.

Dowd: Just so you know we've already been in touch with the Tax Assessor with the idea that once this is approved, we would do a merge. That is the plan, understanding that at the time that we were here we had a buyer that wanted to buy both lots and combine them. We still think we have that buyer. That is the intention and if you were to make it a condition, I'm sure my clients are ready to go forward with it.

Conti: You are advertising it as one lot right now.

ZB 2021-4K

Dowd: Yes, but I think we do have a buyer. I think we are good with a single lot.

Machelor: What about the fact that if this gets approved these 2 driveways are next to each other, there is a lot line there somewhere. What does anybody think about that we would want to separate those driveways by some type of device?

Dowd: It wouldn't be a device necessarily. What would be the separation and I point this out for 2 reasons.....again I don't want to be too critical of folks but one of the issues raised by Mr. Carpenter was geeze you shouldn't be able to go over that water line. The reason I'm bringing this up is proximity and impact on the water line. Frankly it's up to Mr. Zahno what happens to the water line. That driveway going to Mr. Carpenter's house goes over the water line no different than ours. We've agreed to move our driveway as far north as possible to stay off the water line so that there would be separation. Our driveway is going to be as far away from Mr. Carpenter's driveway by virtue of staying off the water line.

DeCastro: Are you telling me that Mr. Carpenter's driveway as it stands currently is over the easement that we are discussing, over the water line?

Dowd: Just so you understand the easementis like 67' wide and it runs east to west. Our driveway is sort of north of where the lines actually lie in the easement. You've got that 24'. The easement goes another 40' up in to Mr. Carpenter's yard. Whether it's part of the road that's covering the actual lines because of their location or whether it's his driveway that's covering it, either way it's going under that easement. It's no different than what we're asking for. We want to go perpendicular; we want to cross it and not go over it.

Carpenter: Can I interject here please? I just want to remind the Board what I mentioned at the first meeting it's not about the driveways connecting it's that the proposed snaked driveway would run 2/3rds parallel to my front property line with zero setback. My yard would hit the driveway. There's no setback and it runs across my house. It's not like it runs next to my house or to the side.

Seaman: Are you suggesting it runs up on your property?

Carpenter: No, it runs, the s-snake runs along the front property line with zero setback.

Seaman: You're saying that the driveway that's proposed would run directly on the edge of the property line, is that what you're suggesting?

Carpenter: Look at the documents.

Seaman: Is that what you're telling us? Is that your position?

Carpenter: I will defer to Barry on that.

Seaman: Mr. Dowd would you like to speak to that?

Dowd: I think what he's referring to is a map that I submitted to you and we hand drew just to give an idea about where this line would go. This is 24' goes to about here (map) This is Mr. Carpenter's

property. It probably comes down to this line. This is certainly inside it. After talking to Mr. Zahno, we'll probably keep following straight along here and cut straight up so that it's only perpendicular. We, this S thing that he's talking about, I think he's suggesting that this might be right on his property line, that's not going to go there. That can be an absolute condition by this Board that we run the driveway along the north side of the easement and then make one perpendicular cut. This S was just for explanation purposes or a suggestion. We will not be doing that.

DeCastro: Mr. Dowd, that driveway if approved off of Oakhill would just be for one parcel, right?

Dowd: One parcel, one single-family home.

DeCastro: I'm concerned about the safety of Mr. Carpenter's children but it would only be 1 or 2 cars? It wouldn't be like a highway, right?

Dowd: It wouldn't be a road at all, it will be a residential driveway.

DeCastro: A private access for how every many cars would be on that parcel?

Dowd: A residential home.

Donohue: It is his position that as it's drawn it would go right up to the property line and now, they are saying they're not going to do it as drawn.

Machelor: That would be another condition of approval of an actual drawing of where it's going to go.

Dowd: Yes sir, and that's exactly what Mr. Zahno and I did is we looked at it and said keep that driveway as far north as you can until you can get up and cross over one time. That S driveway will not be considered.

Conti: A big concern of this Board is obviously water and sewer lines. It's an easement for that reason. I need to defer to Mr. Zahno and Mr. Ritter as far as their thoughts because that....as a Board and as a Town Board we have to be concerned about these things. I would like to defer for a minute to them and get their opinion on what's the better to go on these things and what will be a less impact to the Town.

Zahno: For me it's going to be for them going off Sullivan Court. They would only cross the water line one time.

Ritter: I'm with Dan on that. Most of the repairs or something that we have to make to a sewer line would be done from the inside of the pipe. It's pressure problems that Dan has to deal with is one of the reasons why I'm here is because we just want to stick as close to Town Code as we can, just as a matter of principal.

Machelor: Didn't we just here testimony about crossing the 16" line where the home would be put?

Zahno: They will cross it no matter where they put it. There is an 8" line that runs in there too.

Machelor: No matter what we do they are going to cross the 8" line once?

ZB 2021-4L

Conti: They will cross the 8" and 16" if they come off of Oakhill. They are going to cross the 16" if they come off of Sullivan. The same impact on either one.

Zahno: I'm not saying the driveway is going to be over the top of the water line but if it does go that driveway will be coming out, no questions asked.

Dowd: Again, we have agreed to put a restrictive covenant in the deed that the Town would not be responsible to make those repairs.

Conti: We have to make the repairs to the water line and stuff.

Dowd: Anything we put over it, we will replace. The Town would not have to do it.

Machelor: These conditions are verbal here we've heard. They didn't come as part of the package. I made notes: the driveway goes as far to the north as possible on the property. The properties be combined in order for this to work. There is an agreement in the future with the HOA allowing that to happen. It's a straight cut until (1) 90-degree angle to get up to the property. Restrictive covenant to repair the damage.

Dowd: All of those conditions are acceptable.

Machelor: Any comments on these conditions? Any more conditions?

Maggard: They would have to stay 30' between the 2 properties. 15' on both sides.

Conti: They can't do that. It can't be done.

Machelor: That's not a possibility.

Dowd: If I can address that quickly, if we stay as far north as we can and that lot...the whole thing is 24', if the driveway is 12' wide and expect most people would have a 12' driveway, maybe 10', if we had a 10' wide driveway and we were as far north as we could be at the easement, we would be 15' off Mr. Carpenter's property line, 14'. They're certainly very close.

Machelor: We don't know what part of his property is driveway, takes up either.

Dowd: Frankly some of Mr. Carpenter's driveway could be on the Deck's property for all we know. We don't know. We've never had a reason to investigate it because it wasn't a problem.

Donohue: It kind of anticipates my question, it's a 25' window and they're only going to use the top 12'. I think the current driveway for Carpenter does go right up to the property line. What is to say if you grant this, they won't put in a 25' driveway? Will that be a condition of it?

Dowd: If I may suggest Mr. Carpenter's driveway goes right up to our property line. I can't see why there would be any objection that we might do the same thing.

Donohue: That's our problem, that these driveways are going to be right on top of each other.

Machelor: Actually, they're not but we don't have drawings in front of us. What the testimony is that they move it to the north, they're going to have probably 12-15' before you even get to Mr. Carpenter's property. Once it gets there we don't know if his driveway is 5' from his property, 8' or whatever amount of feet. We don't know. Thank you.

Maggard: Did he have a variance?

Machelor: Not that we know of. They had a subdivision plan.

Dowd: I believe that was approved by the Planning Board those lot frontages in that area.

Machelor: Any further testimony? I would like to ask the Board if they have any questions before we close the public hearing?

Conti: One of the discussions that we've gone over back and forth and we don't always know the answers but the engineers and the Planning Board and the Town Board back in the 90's when this was all approved put the driveways on Sullivan Court for a reason. Obviously, there is nothing written anywhere that shows the exact reason but the engineers did their due diligence I would assume to put the driveways off of Sullivan Court for that piece of property. He's asking us to turn around what the engineer deemed necessary back in the 90's.

Dowd: Maybe what I'm really trying to do is put it back the way it originally was.

Conti: We don't know if it was originally that way.

Dowd: I understand but the point being we have the access and we're making....we're certainly going to comply with your conditions. I can't speak that we're going to make it a single lot.

Maggard: What about making it a double lot?

Machelor: It is a double lot now.

Conti: On the records it's a double lot. They're selling it as a single lot. It's on the real estate market right now as a single lot. If they had a single lot, they would have a 66' coming right off of Sullivan Court.

Machelor: The area variance criteria and we dance around these things, whether this request is substantial? It is substantial, if you go by the Code of 75' and this is 25'. That's for sure. Whether this can be achieved by some other means and it can because it's already been approved. We had a financial thing hanging above us but we're not in that position to rule on it. It can be achieved some other way. The difficulty, one of the things we look at is self-creation. The owner is coming to us because he has a plan that doesn't fit. It's his plan. If he had just combined the lots, use the 66' and put one driveway up there, we wouldn't be here. We always have to balance what the alternative is if we say no to people, sometimes they say you have to yes to us because the results are going to be disastrous. Everybody wants what they want.

DeCastro: Mr. Chairman, when it comes to feasibility, I understand Sullivan Court exists but we were given estimates which was requested last time. That may not go towards substantiality but Sullivan Court would cost \$51,-\$58,000. Versus what it would cost to go through Oakhill, I think that kind of plays towards there not be another feasible means.

Machelor: It could be. I don't know what it's going to cost to do what they have in mind.

Conti: We had asked for estimates because there was talk that it's going to be hundreds of thousands of dollars so we said we need an estimate to see how much exactly it was going to be.

Dowd: I don't remember saying hundreds of thousands of dollars.

Conti: There was talk and I remember hearing it so we said let's get an estimate on how much it's going to cost and go from there.

Maggard: Why do we care how much it's going to cost?

Machelor: We don't.

DeCastro: I think we do because of the feasibility. We have to see if there is other feasible means. I think \$51,-\$58,000., for the average person in this Town is a substantial amount of money that would not provide feasible alternatives.

Machelor: It's only in comparison to what the other project would cost.

DeCastro: Which I'm assuming would be putting black top over an existing road.

Machelor: There's not an existing road. A road has to be created.

DeCastro: They said last time it was an access road.

Machelor: It's going to be long like an access road. It's going to be expensive.

DeCastro: I think it is an access road. It's an existing road and they're putting black top over it or whatever they want to. It won't go to \$51,-\$58,000.

Machelor: What if it went to half?

DeCastro: It would be less substantial and it would be more feasible, wouldn't it?

Conti: That's one criterion.

DeCastro: I think we have to look at it from both sides here because....

Machelor: We don't want to do the money, that's the problem. It somebody told me it's going to cost them \$40,000. to connect to Oakhill which I wouldn't think is unreasonable, that would change the whole dynamics here but we don't do the money.

DeCastro: But we asked to get the estimates, so we do the money.

Maggard: I think we need to make a decision.

Dowd: Mrs. Maggard made a good point; it speaks to practicality of what we're requesting. Certainly, from a drainage and water run off and safety perspective coming off of Oakhill seems to make more sense. I can't speak to why they did that years ago. When you talk about substantiality on how big of a variance are we looking for? If what we have right now is only 33' I wouldn't say that 25' is that substantial. We don't have that now. I just think it is more practical to come off of Oakhill.

Machelor: I'm going to close the public hearing. The Board has the opportunity again. If all of our questions have been answered I'm looking for a motion.

A motion to grant the variance request was made by DeCastro with the 4 criteria as outlined by Mr. Dowd and Mr. Seaman,

Machelor: There are actually 5 Damon but that's okay.

Seaman: What are the 5 conditions for the record?

Machelor: The 5 conditions are the developer place the driveway as far north as possible on the property. The properties be combined. There is an agreement with the HOA to enter Oakhill Road.

Seaman: I would recommend an adjustment on that. What you're going to need for the applicant to demonstrate that they have legal access to Oakhill Drive. Whether or not it's through an HOA agreement or otherwise it doesn't matter, they need to demonstrate that they have legal access to Oakhill Drive.

Machelor: The fourth one which I wrote straight cut which has to be said that we have to approve the final plan, the final drawing where you're going to cut over the line for the driveway, the conditions on the driveway, how you're building it.

Seaman: The condition on that would be the applicant work with the Town of Lewiston to minimally affect the water and sewer lines in that area.

Machelor: The final one is a restrictive covenant to repair any damage as a result of what you're doing.

Seaman: That would be that the applicant is going to file a new easement with the County Clerk's Office indicating that the property owner would be responsible for any repairs to any improvements on the property that are necessitated by any access to the water or sewer lines within that easement.

Machelor: Those are the 5. We have a motion on the floor with those 5. Do I hear a second? Not hearing a second the motion was denied. Any other motions?

Seaman: Someone needs to make a motion to deny it if you're going to deny it. Right now, you've only made a motion, there hasn't been a second, it's sitting there but there hasn't been a motion yet to make a final determination. If you intend to deny it someone needs to make that motion. Or you can table it if you need time to think. You're not required to make a decision at this time. I'm not hearing anyone other than Damon having voiced any opinion as to what your decisions might be.

Machelor: Do I have a motion to table?

A motion to table the request was made by DeCastro, seconded by Heuck,

Seaman: Just to be clear is there any additional information or are you tabling it with the intend to make a final determination at your next Board meeting?

Machelor: Damon, is that your motion?

DeCastro: My motion would be to either decide on it by the next meeting or put some sort of acknowledgement of what we are deciding on. I think we probably have enough testimony at this point to make a decision one way or the other, so maybe we should try to do that tonight...

Seaman: It sounds like you're merely tabling it to contemplate your determination. You'll be making a determination at the next Board meeting? Is that fair?

DeCastro: Yes.

Motion carried.

Conti Aye, Machelor Aye, Maggard Aye, DeCastro Aye, Heuck Aye

The next item on the agenda was a request from Chris Bragdon, 873 Orchard Drive, SBL# 102.09-1-57, for a variance from Section 360-38, yards required, from the required 35' front yard setback to 32' to allow for a 6'x12.38' front porch. The property is presently zoned R-1, one family residential.

Chris Bragdon, 873 Orchard Drive. We are requesting a variance to the 35' front yard setback to 32' so we can build a porch off the front of our house. The porch would extend 6' in front of the house.

Conti: So, you're looking for a 3' variance.

Machelor: Questions from the Board? Questions from anyone else?

DeCastro: Are there any other porches in your neighborhood that would go along with this?

Bragdon: Our neighbors to the west, the Johnsons, and they've submitted a letter. Theirs is out, it is set back a couple feet from what we're proposing. That would be the closest.

ZB 2021-4Q

Maggard: We have a letter here that is in complete support.

Public hearing closed.

A motion based on the Board's discussion and the following considerations that the 3' setback variance was determined that the benefit of the variance to the applicant outweighs any detriment to health, safety and welfare of the community, that the variance request is the minimum necessary and the variance be granted was made by Conti, seconded by DeCastro and carried.

Conti Aye, Machelor Aye, Maggard Aye, DeCastro Aye, Heuck Aye

The next item on the agenda was a request from Steve Denn, 4509 Lower River Road, SBL# 87.10-1-10, for a variance from Section 360-38 B, Yards required, from the required 15' side yard setback to 12.87' to allow for a new garage. The property is presently zoned R-1, one family residential.

Steve Denn, 4509 Lower River Road, Town of Lewiston. I'm considering demoing my existing 2 car garage and replacing it with a new garage on the same foot print with office to be attached to the new garage on the back. The current garage sits 12.87' off of the property line. The new garage will be in the same foot print as the existing garage. I was told by my architect that because it's a new build, it's not going to be grandfathered in anymore, it needs to get a variance from the 15' setback.

Conti: You're looking for a 2.13' variance, side setback on that side?

Denn: Yes.

Conti: Which it was to begin with basically. You're going back farther?

Denn: If I do this project but obviously, I need to get approval. Currently the neighbor to the south is the right-of-way, basically undeveloped land right now that's owned by Mr. Washuta.

Machelor: Is there anyone else that would like to speak to this property?

Public hearing closed

Machelor: Does the Board have any questions?

A motion to approve the variance request that the variance outweighs any detriment to the health, safety and welfare of the community was made by Heuck, seconded by Conti and carried.

Conti Aye, Machelor Aye, Maggard Aye, DeCastro Aye, Heuck Aye

The next item on the agenda was a request from Peter Tagliarini, 794 Chicora Drive, SBL# 101.02-1-12, for a variance from Section 360-185C, accessory uses and structures, from the required 5' rear yard setback to be right on the property line to allow for a shed. The property is presently zoned R-1, one family residential.

DeCastro: Before we begin Mr. Tagliarini by an attorney in my office who rents from us. I want to make that conflict known. If the Board would like me to recuse myself?

Seaman: You have to make that determination on your own.

DeCastro: It's not me representing him, it's not anybody in Rosetti & DeCastro but Mr. Parone, who rents from us. I'm making it known. I don't think it's a conflict but I wanted to let you know.

Conti: I would also like to read a letter in to the records that came in today: Regarding the Tagliarini variance, Dear Town Board Members: I'm writing this letter in response to Mr. Tagliarini's variance request. My concern is that if the variance is allowed when we develop the adjoining acreage, we'll have no space to work with storm drainage. I believe that is why setbacks are required. I know Peter well and I certainly respect his character. However, I feel this request is an issue for future development. I cannot see why a 5' setback would be a problem for his shed. Thank you in advance. Sam Talarico

Tagliarini: Based on the amount of property I have in my back yard, from the property line on the north to the back of my house there is about 20'. I'm trying to put a shed in there that would be a 10'x8' shed. If I have to bring it up an additional 5' it leaves no room for me to get anything in to that shed.

Machelor: The Code says you have to be 5' which is not a substantial amount of feet from the property line. One of the reasons is to protect the properties next to you. That's why that's in there. The problem is your testimony is if you moved 5' from each of those property lines that it wouldn't be usable. I just don't know if that's actually true or not. You've drawn this here. You put the shed; I don't know why but you put it in a cock-eyed fashion. Was that your drawing?

Tagliarini: Yes, that is my drawing. It would be placed in the corner along the west property line and then also on the north.

Machelor: Come up here a minute.

Tagliarini: The shed would be placed on an angle. If we place the shed, if I had to go 5', there's 20' between this property line on the north and the house. That would leave me 15' between the face of the shed and the house. Of course, if it's a 10' shed.....

Conti: That would be the 8' part there. That would leave you 7' here and the 10' part you would have 5' here.

Tagliarini: There won't be enough room.

Conti: If it's 7', if you're saying it's 15' from here to here, subtract 5', that brings it to

Tagliarini: 20' between...

Conti: You would have 7' between the house and the shed.

Tagliarini: I also have a generator that is here, a gas generator that sits here.

Conti: You're asking for 100% variance.

Tagliarini: If the gas generator wasn't here that might be another option. I'm fighting a generator and air conditioner. There's fencing there. I have birch trees that are quite mature.

Machelor: You're not 15' from the line. Did you get a variance?

Tagliarini: I didn't build it, I bought it 2 years ago.

Maggard: Do you need 8'x10' or can you go smaller?

Tagliarini: We could reduce it down to an 8'x8', that's doable but I can't see why that would affect really what we're trying to do as far as the extra 2'.

Conti: You have to understand one thing is that anything within that 5' has to be all fire proofed.

Tagliarini: That's understandable. The generator is sitting right here.

Machelor: You're hearing various options, smaller building, not right on the property line but several feet in.

Tagliarini: Can I go 2' in? Would that be a consideration?

Maggard: Build your garage coming out towards the front of the house and leave the back of the garage as the shed?

Conti: Even if you did an 8'x8', you're 5' off of here. Being within that 5' distance on both sides is hard.

Tagliarini: If I go to an 8'x8' shed and I come up 2' from the property line do you think that would satisfy Sam Talarico's concern?

Conti: That's why there is the 5' easement for that. That's a huge thing. Did you ever talk about buying 5' from him?

Tagliarini: He won't sell. We've already asked about 3 weeks ago.

Machelor: Further away from the property line and a smaller shed is probably the only option you have.

Tagliarini: What would be acceptable not to waste the Board's time here as far as moving it forward from the property line?

Conti: It's a tough one.

Tagliarini: The whole thing has to do with future construction and he's not even sure that it would be a problem.

ZB 2021-4T

Machelor: That's not necessarily true. It's not about future construction. It's about the Code. His opinion is worthy of hearing. The issue is whether or not what you're asking for is so substantial and created by yourself, self-created problem.....

Conti: How long ago did you buy this property?

Tagliarini: About 1.5 years ago.

Conti: You knew the problem.

Tagliarini: You learn as you go with the house what things are required. I thought a shed would really help out with all the stuff you have to put in the garage. There is no other place to place this without running in to either moving a generator and that could be costly.

Machelor: We're saying the answer is a smaller shed and some step back from the property line.

Maggard: Both directions.

Conti: There is no room for the shed here?

Tagliarini: I have a jacuzzi sitting back there. This is a fenced area and when you open the fence the jacuzzi is sitting right here. This is really the only viable option we have at this point.

Machelor: Does anyone feel we should have him back and do some better drawings and do a smaller shed sizes and see what you can fit in to there?

Tagliarini: I just want to be clear about this, if I apply for a 2'....

Conti: We can change that here if we deemed that's okay. That's a tough call within that 5', it's so close to the property line.

Machelor: Do we think 3' is a reasonable compromise?

Conti: Not really. It's a tough one.

Tagliarini: What is the code of putting a shed right next to the house? Does there have to be a certain amount of distance?

Machelor: A fire wall. They can give you the regulations.

Seaman: You should check with the Building Dept.

Conti: You have to talk to Tim.

Tagliarini: Thank you for your time.

Public hearing closed.

A motion based on the Board's discussion the following consideration that it's too close to the lot line that the Zoning Board determined that the detriment to the health, safety and welfare of the community outweighs the benefit of the variance and the variance be denied was made by Conti, seconded by Heuck and carried.

Conti Aye, Machelor Aye, Maggard Aye, DeCastro Aye, Heuck Aye

The next item on the agenda was a request from William Krell, 4962 Creek Road Ext., SBL# 101.16-1-25, for a variance from Section 360-194 (4) Fencing and walls, to allow for a 6' stockade fence to have the better side facing inward. The property is presently zoned R-1, one family residential.

William Krell, 4962 Creek Road Ext., Lewiston. I want to put a fence up, good side fencing my property. I actually already did it. I came here about a year ago to get a variance and they told me I shouldn't so I said well I'll put the fence up the way that I didn't want to. I put the posts in the ground and my neighbor's property, I have some pictures. There is a chain link fence on the border of my neighbor's property where I want to put my fence up. There is no way I can work through the chain link fence to put the boards on that side. So, I said well I have to do it this way and then I'll go for the variance. That's why I'm here now.

Conti: Did you get a permit to put the fence up?

Krell: Yes.

Machelor: But you put it backwards?

Krell: Yes.

Machelor: You could have put it a foot away from the fence.

Krell: I could have but then I couldn't maintain it. If I can show you the pictures. You have to maintain in between. This is what I was covering up. I've looked at this for 10 years. This chain link fence where a dog chewed and I put re-barb through it to hold the chain link fence up. That's what I looked at for 10 years. They have 2 dogs; my back yard goes all the way past this. Every time I go out there their dogs would be barking in the house and they would let them out to bark at me. I talked to the land owner because I train dogs so I asked him if I could help him and his wife didn't want to.

Machelor: The only thing wrong with it is it facing you instead of your neighbor.

Krell: Exactly. This is the neighbor, he was grandfathered in, his fence was grandfathered in. There would be 2 sections of it facing that way and I built my fence the other way. I mentioned to the homeowner if you want to cut that fence down once mine is up and then put your fence at the bottom and he thanked me but he hasn't done it.

Machelor: Any further questions from the audience?

Conti: Could you have built the fence in sections and then attached it?

Krell: I had the posts up already and to be able to turn it, I did it myself. There is no way I could take an 8' section....I would physically have to lift it because his fence is there. There is no room to turn it to get it in there.

DeCastro: Can I ask for some clarification here? You're asking for a variance where the good side of the fence would be facing the interior of this property?

Krell: Yes.

DeCastro: But the outside and the other side would be up against the fence already? But there is a chain link fence.

Krell: It's in total disarray.

Public Hearing closed

Maggard: I went over there and looked at it today. The whole system all the way down through leaves a lot to be desired.

Krell: With the chain link fence?

Maggard: Yes, and your fence too because it's facing in the wrong direction. Is there anyway that you can cover that up? I know there's boards showing that it's wrong.....can you somehow stream line that side to make it look like it's the right way?

Krell: I couldn't get in there to nail because the chain link fence is right there. I can't get a hammer in there. There are 12 nails on each picket.

Maggard: How did you install the fence if you couldn't get in there?

Krell: Because I'm on the good side nailing. The chain link is on the other side. I'd have to be over here trying to get through the chain link fence swinging a hammer. You can't do it. On the good side I had plenty of room on my property.

Machelor: Thank you. I'd like a motion.

A motion to grant the variance request was made by DeCastro based on there weren't many feasible means to change the fence for the good side to be out, it won't have a change in character of the neighborhood in a negative way, there won't be any physical or environmental effects on the neighborhood or district considering it's already installed and there was no testimony to the contrary, it's probably self-created but put there in order to accommodate the chain link fence and the dogs which he didn't create, seconded by

Seaman: Just to be clear for the record what Damon's motion is doing is reversing your building inspector's determination because this is an interpretation. By granting the request of the applicant you're reversing the determination that it's against the code, just for the record.

Conti: Cost wise you would have to remove the fence and to re-do it all.

Motion seconded by Conti and carried.

Conti Aye, Machelor Aye, Maggard Nay, DeCastro Aye, Heuck Nay

The next meeting will be May 13, 2021, at 6:30 P.M.

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

Respectfully submitted,



Sandra L. VanUden
Zoning Secretary



Norman Machelor
Zoning Chairman

NOTICE OF PUBLIC HEARING

Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals of the Town of Lewiston on April 8, 2021, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Chris Bragdon, 873 Orchard Drive, SBL# 102.09-1-57, requests a variance from Section 360-38, Yards required, from the required 35' front yard setback to 32' to allow for a 6'x12.38' front porch. The property is presently zoned R-1, one family residential.

Steve Denn, 4509 Lower River Road, SBL# 87.10-1-10, requests a variance from Section 360-38 B, Yards required, from the required 15' side yard setback to 12.87' to allow for a new garage. The property is presently zoned R-1, one family residential.

Peter Tagliarini, 794 Chicora Drive, SBL# 101.02-1-12, requests a variance from Section 360-185C, accessory uses and structures, from the required 5' rear yard setback to be right on the property line to allow for a shed. The property is presently zoned R-1, one family residential.

William Krell, 4962 Creek Road Ext., SBL# 101.16-1-25, requests a variance from Section 360-194 (4), Fencing and walls, to allow for a 6' stockade fence to have the better side facing inward. The property is presently zoned R-1, one family residential.

Information concerning these requests are on file and available for inspection during normal business hours at the above-named office. All citizens and persons of interest will be given an opportunity to be heard.

Norman Machelor
Zoning Chairman
#N281704

4/1/2021