

ZONING BOARD OF APPEALS

Town Hall 1375 Ridge Road Lewiston New York
Thursday – June 10, 2021
ZB 2021-6

Present: Conti, DeCastro, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

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

Pledge of Allegiance

A motion to approve the minutes of May 2021 was made by Maggard, seconded by Heuck 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 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 a denial to prohibit a project as presented.

Public Hearing Open

The first item on the agenda was a request from Roderick McGill, 4668 Creek Road, SBL# 87.20-1-3, requests a variance from Section 360-185E, Accessory uses and structures to allow for a pole barn from the maximum height of 18' to 21'. The property is presently zoned R-1, one family residential.

Machelor: Please come up and state your name and address for the record.

Rod McGill, 4668 Creek Road. I'm in the process of trying to build a pole barn with the hopes of a variance to the Town's allowance of 18'. I'm requesting for it to be 21' high with the hopes of in the future building a loft in part of the pole barn. I do have a picture here of my back yard looking at my neighbor's who also have 2 or 3 barns. They also have 2 story barns as well.

Machelor: You feel they are higher than 18'?

ZB 2021-6A

McGill: They are and I get it they've been there; I've been in the house for 16 years myself. They were there when I moved in. I guess it's my understanding the Town is considering going to a 22' allowance in the near future?

Conti: Yes, there is talk.

Seaman: Is the only issue the height on this?

Conti: He was here last month to build on the property line.

McGill: As soon as I was done with the variance last month my builder dropped off the drawings and I dropped them off and sure enough it was fill out another variance if you want to build this because it's higher than what's allowed.

Machelor: How many sheds do you have on your property?

McGill: I have a small shed that I use for garbage to keep the raccoons out.

Machelor: I'm curious, it says proposed area for shed. There is a kennel there?

McGill: I already have a permit as well for building a lean-to on our patio just to keep lawn furniture.

Machelor: That's a separate issue?

McGill: Yes. I don't have any issue with that. It's for the bicycles and what not for the kids.

Machelor: You moved it the 5', that's done.

Conti: The only thing this is for is to go to 21' from 18'.

Maggard: How will you get the water back to the pole barn in the event there is a fire or anything like that? I see you have over 600'. Are you intending to run water back there?

McGill: Not at this time. If I need to, if that's a requirement I can do that.

Conti: That is not in front of us at all.

Maggard: No, I realize that. I'm looking at a second story too.

Conti: That is something that the Building Dept. would have to be concerned about. We're only looking at the height.

Maggard: I was concerned about this proposed area for the shed. Again, you just explained that to us. Will it be attached to the house?

McGill: It will.

Maggard: And you're not going to get rid of the vinyl shed that's way in the back?

McGill: I've moved the vinyl shed to my driveway and I use it for garbage to keep the racoons and possum and what not out of it.

Maggard: Thank you.

Heuck: There is one question you answered in the affirmative on your SEQRA. I'm just curious more than anything. It has to deal, it says "does the proposed action meet or exceed the State Energy Code requirements" and you answered yes.

McGill: I'm a little confused. I don't know if I checked that off.

Heuck: It was checked off yes. I was just wondering why you checked it?

McGill: I don't recall.

Machelor: I'll entertain a motion?

Seaman: You have to address SEQRA on height variances oddly enough. It would be a negative declaration on height. You need to do a SEQRA motion to negative dec. this project with regards to SEQRA. You have to make either a positive dec or negative dec on SEQRA. On this one it would be a negative dec. It doesn't have any environmental impacts. The height variance of, the way the SEQRA law is drafted oddly it does not exclude small height variances. Height variances in an extreme scenario could have an environmental impact. It doesn't limit something so small as a 5' variance. Officially you should make a motion on a negative dec on SEQRA and then make your determination on the area variance.

A motion for a negative declaration for SEQRA was made by Heuck, seconded by DeCastro and carried.

A motion to approve based on the Board's discussion and the following considerations, the Zoning Board of Appeals determines that 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 for the pole barn to go from 18' to 21' was made by Conti, seconded by DeCastro,

DeCastro: If there is going to be proposed legislation for 22', do we want to give him 22' just in case?

McGill: The drawings were submitted at 21'. Thank you though.

Motion carried.

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

Conti: At the last meeting we had Karl and Cara Turner of Harper Drive that we tabled until this meeting. They were not here. I would say we bring it up at this meeting and they were notified again.

Seaman: Now that it's tabled you can leave it tabled indefinitely.

Conti: For what reason?

Seaman: If you had adjourned it, it would just push it to this meeting. To table it puts it in a scenario where you have to take it off the table. You can do nothing and it just sits until she shows up and let's us know what she wants to do.

Conti: I say bring it back up and get rid of it. That is my opinion.

Seaman: You tabled it last time because I thought someone wanted to talk to the woman?

Conti: She (VanUden) reached out numerous times and she never responded.

Seaman: The Board had tabled it because they wanted to hear from the applicant.

Conti: Right, because she wasn't here. She didn't show up like she was supposed to. We just postponed it to this meeting right.

Seaman: You tabled it.

Conti: We said we would bring it up at this meeting.

DeCastro: I think it's a bad idea to indefinitely table things because people don't show and the certain one, we, we voted it down because they didn't show, they can show at a previous one we had a previous one that sat forever. I think we should make a decision and get it over with. If it was important, they would show, I think.

Conti: Right. This has been 2 meetings now they haven't shown for. I'll do what everyone wants to do but that's my opinion. Let's discuss it before we make a motion.

Seaman: If you want to address it you have to un-table it and then you can discuss it and make your decision.

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

Conti: She wants to extend her garage to a two car and that would bring it, they want to be 5' side yard setback.

Machelor: So, are you saying we should say yes or no based on this?

Conti: That's all we have.

Machelor: In my opinion, this is discussion. I think we should deny until she shows up and clarifies exactly what she's up to.

DeCastro: Shouldn't we say without some persuasive testimony, showing some reason why the variance should be granted?

Conti: Right now, it's 17.4'. She wants to put an addition 12.4' so it would only leave a 5' setback.

Machelor: She's supposed to have 15'. That's very substantial in my opinion. There's a reason to deny right there. Just because she agreed to be only 5' from a property line doesn't mean that it was a good enough plan on her part.

Maggard: It's substantial.

Conti: It is substantial.

DeCastro: That's why I'm saying failing at persuasive testimony....

A motion to deny the variance request was made by DeCastro due to the substantial 5' request from 15' to 5', there was no testimony to show why it should be considered, seconded by Heuck and carried.

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

DeCastro: Can I ask our Town Attorney for some clarification? If one condition is not met....

Seaman: You're required as a Board to consider all 5 of those conditions, not any single one of them needs to beunlike a use variance where someone is asking to change a use where they have to hit every single qualification, they have to meet all of them to get a use variance. An

ZB 2021-6E

area variance is a balancing test of all 5. To sustain a law suit on an Article 78 you would have to have properly considered all those things but as long as you considered them, a judge will generally uphold your decision as long as you have reasonable basis over each of your considerations.

DeCastro: I just want to make sure I covered enough.

Seaman: I don't think she's Article 78 us.

The next meeting will be July 8, 2021, at 6:30 P.M.

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

Respectively submitted,



Sandra L. VanUden
Zoning Secretary



Norman Machelor
Zoning Chairman