

ZONING BOARD OF APPEALS  
Town of Lewiston 1375 Ridge Road  
Lewiston, New York 14092  
Thursday – May 11, 2023  
**ZBA- 2023-05A**

**Agenda: Sanchez- Cherry Lane (A), Baptiste- Edna Drive (B)**

Present: Conti, Heuck, Machelor, Maggard, Warnick

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

Machelor: Thank you! I would like the board to look at the minutes of April 13 any adjustments or changes.

**A motion to approve the minutes of April 13, 2023, was made by Heuck, seconded by Maggard and carried.**

**Machelor: Ok a motion approve has been made in the seconded. Further discussion all those in favor as AYE**

**Members: AYE**

Machelor: Ok our first variance request is from Cynthia Sanchez. Oh, I don't know if anyone is here no ones here from LMK realty are they? No ok LMK realty has been pulled off the agenda until June. Alright.

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented. That's what we do. With that I am going to open the public hearing for Cynthia Sanchez 437 Cherry Lane SBL 87.18-1-3. Who would like to speak to this?

Cynthia Sanchez

Machelor: You yes come forward and speak into the mic

**ZBA- 2023-05A**

Sanchez: I live at 437 Cherry Lane. I have a very strange property line to start off I have its about 2 acres it goes I do have some pictures. It's so my neighbors next door started a fence and put up a portion of the fence and then it was not completed and then upon my attempt I didn't realize, obviously upon completing it they spoke with the neighbors well it looked odd because it was started and then there's and L that completes it. And the conversation was like how can we make this look good and the conversation was that let's keep it the way it is. So, we did and then found out it was wrong. So that's where we are at. The rest of my property line is like a farm fence it's more open. So, I have like 3 or 4 fences that kind of make up my property line. So, it is a bit of an odd yard. But I do feel that this is the most appropriate looking completion of the fence. Yes

Machelor: Come on up and show where your fence is

Sanchez: So, this beginning if I how you this one is bigger. You're looking at that the beginning of the fence was here and that was place by my neighbor.

Machelor: Is that your neighbors' fence?

Sanchez: Yes. This is my neighbor's fence

Machelor: And your neighbor's fence is facing you

Sanchez: Yes

Machelor: Where are you?

Sanchez: This is my property this is their property

Machelor: Your neighbor's fence is facing you

Conti: And they put it in right

Sanchez: They put it in properly

Conti: Right

Sanchez: But never completed it

Conti: Right

**ZBA- 2023-05 A**

Sanchez: So, there was this fence that was going through and incomplete so I was just kind of like... And then this is my property here and as per a conversation with them in the conversation with them- How do you want to do this? I didn't realize that I my mistake but they said for it to be incongruence it mimics the good side facing me which obviously is wrong.

Conti: So, you put in that and all the way back

Sanchez: Yes. So, this and this was put in by me

Conti: Ok

Maggard: Is it all done already

Sanchez: It is done

Maggard: Oh

Machelor: So, your neighbor did the right thing when he put his in

Sanchez: Correct

Machelor: In other words

Conti: But didn't finish it so just tried to finish it finished everything off

Machelor: the new fence is on your property and you paid for it

Sanchez: Yes

Machelor: Right

Sanchez: Yes. And my house is here I don't even see the fence. My house is like... So, this part of the fence is not even to an advantage to me.

Machelor: Where is your house

Sanchez: This is my house would be over here this side

Conti: Your house is over here right

Sanchez: My house is here

**ZBA- 2023-05A**

Conti: Right

Machelor: The light green over there is that your yard

Sanchez: This is my yard and this is my yard all that's my yard

Members/Sanchez: Talking

Warnick: Can you do me favor so this is your property 437 right so where is this fence actually at?

Sanchez: I am a little confused

Warnick: Ok that's the front yard

Sanchez: So, mine is here. This is theirs and this is mine

Warnick: Ok that right there gotcha

Sanchez: And this is all like farm fencing all around this area

Members talking

Sanchez: It was my mistake

Maggard: What's in the back here

Members talking

Machelor: In fact, if he had put that up himself, he would have had to do what you did

Sanchez: For sure

Machelor: So, you did what he would have done

Sanchez: Yes, it was just not being completed and I wanted it done

Warnick: Is that Jonathan signed this

Sanchez: Jonathan did sign it to say

Machelor: That's a great piece of property

**ZBA- 2023-05A**

Sanchez: I love it I think it was purchased after

Conti: Kind of a weird

Sanchez: It's a neat lot. But it's a little piecey

Machelor: Left over

Serianni: Just to certify Umm Is the photo you submitted with the application the same photo you were showing the board

Sanchez/Serianni talking

Members talking

Sanchez: Anyone else want a colored copy?

Conti: I was expecting a drawing of it but ok

Sanchez: Next time

Conti: Next time maybe

Heuck: Next time maybe right

Machelor: Alright the public hearing remains open. Is there anyone else in the audience that would like to speak on this issue? Ok I will close the public hearing. Ask the board if they have any questions.

**Conti: I would like to make a motion. Based on the board's discussion the Zoning Board of Appeals determines that the benefit of the variance to the applicant out weighs any detriment to health, safety, welfare to the community. That the variance request is minimal necessary and the variance be granted.**

**Heuck: Second the motion**

**Machelor: Ok I got a motion that's made in the second. Any further discussion any additions? Subtractions? All right I will call the vote. All those in favor say AYE**

**Members: Aye**

**Machelor: Nays hearing no nays**

**ZB-2023-05A**

**Machelor: Lisa poll the board please**

**Lisa: Joseph Conti- AYE**

**Gary Heuck- AYE**

**Norman Machelor- AYE**

**Marjorie Maggard- AYE**

**David Warnick- AYE**

**Machelor: Thank you**

**Sanchez: Thank you!**

**Conti: Your all set**

**ZBA-2023-05B**

Machelor: Ok. I would like to open the public hearing on variance request James Baptiste 945 Edna Drive SBL 131.06-1-3. Yes Sir

James Baptiste: Good evening

Machelor: Good evening

Baptiste: I am here on Tim Master and the supervisor both of whom I have had lengthy discussion with to build a house on the property you see the documents I have provided. The town had never finished Edna Drive from where it dead ends now up to South Military Road, and there are 3 land locked properties one of them being mine side yard to the house my wife and I live in now. It's our hope to build a new house on that empty property next door and we provided excess though and excess easement that you will see in the driveway in the drawing I have provided. And in our application, I mentioned a letter of support from a neighbor and I bought for all of you to review and keep. Here's the letter of support from the neighbor across the street.

Machelor: Is that in our stuff

Serianni: It is not in the application

Machelor: Ok

Conti: If you want to read it out loud

Baptiste: I didn't have it when I filed

Machelor: It's a letter umm from Marc Colucci at it doesn't have his address

Baptiste: It does on the top

Machelor: OK 915 Edna Drive.

Dear Board members,

We are writing in support of James Baptiste and Stephanie Kindzia-Baptiste and their intent to construct a new single-family home on their vacant property. The Vacant property in question is adjacent to our home and lot (north of the line of Edna Drive). They have shared renderings of their home design with us and we believe it will be a positive addition to our neighborhood. Pass that down to Lisa to put with the documents. Ok.

Baptiste: If I may I have one more document I would like to submit just to provide a little more clarity. I took a photograph from the lot where the house would be built looking across at

**ZB-2023-05B**

Edna Drive looking at the Colucci's and I have indicated that prior to the Colucci's building there's 2 telephone poles and the dead-end sign that indicated the end of the street use to be at those telephone poles. And then the Colucci's essentially extended the Road 50 feet to accommodate their driveway. And then they moved the dead-end sign 50 feet past the telephone poles. The telephone poles indicate the line of where the property that I want to build starts so essentially, we have 50 feet of implied frontage already that they use as their driveway. So, it's an unofficial extension of Edna Drive.

Machelor: Yes

Members talking

Machelor: What does this proposed area of work mean?

Baptiste: That... This represents the property that I want to build on. This is where I live right now

Machelor: Where is the 75-foot front yard

Baptiste: Their saying the town Zoning Board says that I should have frontage across here

Conti: 75 feet that's right Town Zoning requirements

Baptiste: That's right

Conti: Town Zoning requirements require 75 feet

Baptiste: That's right. But the road ends there.

Conti: Right so your land locked

Baptiste: Exactly but fortunately I own 945 next door so I can grant myself an easement excess onto this property. Further what I am saying is that they extended the road when they put in their driveway giving me 50 feet of implied frontage.

Machelor: I see. Do you understand that

Heuck: Yeah

Conti: Yeah, I do. But you can't go anything with implied frontage doesn't do anything

Machelor: Well, I might be an official road though



**ZBA-2023-05B**

Conti: I don't know where the official road ends. And that's something we are going to look into

Baptiste: But that's why I brought the image today because it shows where new dead-end sign is.

Conti: But I need to know

Machelor: How long wide is this property disregarding the road

Baptiste: It's 100 feet

Machelor: This is 100 feet

Baptiste: That's correct

Machelor: And this piece of it is going to make this less than 75 feet wide

Baptiste: No sir. So technically I have zero frontage right there or maybe 15 feet of frontage

Machelor: On the road

Conti: I don't know if you got that actually because again, I am not sure where that road actually officially ends

Baptiste: Nobody does

Conti: The Town's gotta have some sort of record they have to be able to tell us where the road ends.

Serianni: There likely is easement a temporary road not temporary permanent road easement on record with the county clerk's office. I don't know about implied

Conti: It can't go by implied road obviously

Baptiste: So, in 2012 Mr. Colucci the father of the current owners he subdivided this property up here 915 and the adjacent key shaped property those were all one property in 2012 and he applied to have those divided so that he could build 915 for his kids. And the zoning board agreed so long as he understood that somebody if they ever wanted to build on one of these 3 land locked properties would be permitted to extend the road to access those

Machelor: We don't have any idea if this road is a paper street

**ZBA-2023-05B**

Conti: It's not a paper street I talked to Tim

Machelor: It's not a paper road

Maggard: I have a question

Baptiste: Yes Ma'am

Maggard: Why is 945 in two different places

Baptiste: This is Edna Drive and that's North Brookside or North Hewitt

Maggard: It doesn't make sense

Baptiste: No Ma'am a lot of things don't. It doesn't make sense to have 3 land locked properties that nobody can develop.

Members talking

Machelor: Alright Joe where is the 23 feet

Conti: He wants to purchase deed this is his property here he has a house on see his lot would be 100 feet and add 23.75 feet of his it still gives him 75 feet frontage for his existing house cause his lots about 100 foot the house lot you have right now is 100 foot

Baptiste: That's right. They both are 100 feet

Conti: You're going to add your other house is going to be about 123 feet ball park

Baptiste: That's right

Serianni: The existing lot does not have any frontage currently?

Conti: The existing lot doesn't have any frontage

Baptiste: That's right

Serianni: What he's asking for is a variance to allow for 23 feet frontage which just encompasses the proposed easement which he will sign over to himself for the benefit of the next-door property which is that orange section on the application.

Members: Right

**ZBA-2023-05B**

Machelor: Would it have been easier to combine these two properties in one?

Baptiste: No because you are only allowed one primary residence so I could not build a second house on the same property

Conti: He would have to build the second house and tear the first house down

Baptiste: Unless we won the lottery, we would do that in a second

Conti: See

Baptiste: You know actually the next property to the west is owned by the Costa Family I believe in Youngstown and we have approached several times to try and buy it from them. Just to eliminate another landlock property but unfortunately, we never heard back from them. We sent them a couple of letters.

Conti: They have 2 landlock properties. They own both those properties?

Stephanie Kindzia-Baptiste: The next one beyond Costa's there is somebody else that owns one

Conti: Because where you want to build your house then there's 2 lots after

Kindzia-Baptiste: Correct

Conti: So that

Baptiste: Costa is the very next one

Conti: Or the one right next

Kindzia-Baptiste: There is actually 3 Costa's own 2 and then there is another third one which butts right up to Military Road. Because I think that is where they having that street extend all the way to Military. But now you've got the old triple A building with their parking lot you know on that side. So, there's really. And with selling with Lewiston, selling the right of way there's really nowhere now for the road to go.

Conti: Or they extended it to 3 lots.

Kindzia-Baptiste: Right

Conti: To give people

**ZB-2023-05B**

Kindzia-Baptiste: So, we are trying to take advantage our residential lot to be able to build on it.

Conti: Has there been any talk as far as what the Building Department you probably need to come back to the mic just so she has it on recording I am sorry of extending that road

Kindzia-Baptiste: No because they sold the property to Colucci's the Town doesn't even own the property anymore. So, we went back so Al Bax. We were trying. So, they were even asking us like can you find anything in your deed.

Conti: Can you come up to the mic I am sorry so she gets it on the record

Kindzia-Baptiste: So now what we are up against we are trying to this historical thing because now we found out in 1980 and that's why we joke with our neighbors Colucci across the street were like the Town of Lewiston sold the right of way to your dad. And they go oh yeah, they totally shouldn't have and he know that but it happened in 1980. Or whenever he sold that property so he

Baptiste: So essentially landlocking those 3 lots.

Kindzia-Baptiste: So that kind of. So, basically after all of the homework it came back to go to the zoning board and see if you can ask for variance so we can at least use our lot.

Machelor: OK

Maggard: Do they have anything to do with sewers? That they put in at that time it was right around 1980.

Kindzia-Baptiste: Umm I don't know

Baptiste: No body indicated that, that was a factor.

Maggard: Do you have sewers on your property?

Baptiste: Yes

Maggard: OK

Machelor: Will you have sewers on your new property?

Baptiste: Yes, the sewers extend past it

**ZB2023-05B**

Machelor: Ok

Warnick: Just not the road

Baptiste: Storm and sanitary

Conti: Goes how far?

Baptiste: Goes well past our property

Conti: It does so the other 2 properties have sewer and

Baptiste: I don't know if extends past their property. I didn't research theirs

Conti: Ok. It goes all the way in front of your

Baptiste: Yes

Conti: Ha there been any talk about talking to the Colucci's saying lets just sell that deed it back to the Town to let them finish the road

Baptiste: You would have to discuss that with them. We told them that theatrically we could build the road and extend it past those legally speaking we could. But we told them we would not build if your choice was to tear up your front yard and put a road though it in order to build, we would not build

Kindzia-Baptiste: And the road doesn't go anywhere like the is no

Baptiste: You would just be extending it

Conti: Part of the issue on that too is fire and safety. As far as not having a large enough driveway and stuff to get back there in case of a major fire. The road ends

Baptiste: 12 foot is the minimal for a driveway

Conti: Not of hand I don't know

Baptiste: I am pretty sure. And that's what we have

Machelor: Yeah, you have that

**ZBA2023-05B**

Conti: Right but I am saying they can't get to the front of your house. To park on the street in front of you house. To get hoses or fire equipment or whatever out because you don't have a front of your house.

Kenzia-Baptiste: The same would be said though for Colucci. So, if you look at Colucci's house they don't have this street in front of their house either.

Conti: Well, the street comes into their house

Warnick: No that's what they made. That's not the official street. That's what we got to. They added the street

Conti: The street ends. Well, the street ends probably at that yellow line am I correct?

Members: Yeah

Warnick: So, it's the same argument could be made for the house that's already there. They don't have fire coverage which

Serianni: They don't have frontage they have side edge 66 feet that abouts the side of their property but it doesn't extend past the front of their house.

Baptiste: In Archiect terms we call it wonky

Machelor: This is an open hearing so is there anyone else that would like to speak to this issue?

Conti: Well ok hold on a second. Where your driveway is now you're not going to touch your driveway and your existing house. When I went out there and I kind of walked it off from that telephone pole to the end of your driveway was about 18 feet.

Baptiste: That's right

Conti: So, where's the 23 ½ feet coming in?

Baptiste: The property extends a little bit past the telephone pole so were going to put our driveway a 2-foot buffer between driveways and then put the new 12 foot driveway in between the telephone poles and my existing driveway. And that is shown on the plans. I had that done by a civil engineer.

Warnick: So, the telephone pole is basically here then

Baptiste: That's correct

**ZBA-2023-05B**

Warnick: So right at the edge of that

Baptiste: There is a little blue mark that indicates that's right so you get a couple extra feet on the other side of that. That's right

Members talking

Machelor: Questions from the board?

Conti: Lots

Heuck: There's too many

Kindzia-Baptiste: He's asked if there were questions and you laugh

Conti: Well, no there's a lot of questions. I can go on, and on

Heuck: There's no answers

Conti: There's no answers that's the hard part.

Baptiste: There's fewer answers the further you go west.

Conti: Really there's no answers. The biggest thing should be to extend that road

Warnick: You can't

Conti: Have Colucci deed that road over. Deed that piece of property over and extend that road out that's the smartest thing to do.

Baptiste: But that's also the most unreasonable to be honest with you

Conti: Well

Members talking

Heuck: Less taxes

Conti: Less taxes

Baptiste: And were paying taxes on a piece of property that we could potentially develop but maybe aren't going to be allowed to

**ZBA2023-05B**

Conti: Right. Unfortunately, yeah that's

Baptiste: And that's not a self-created problem

Warnick: True

Conti: No, it's not

Baptiste: And as I said when I first started the Town Supervisor and the Building Inspector are both in favor of what we propose.

Maggard: How close to the cemetery are you going to be?

Baptiste: We back up to it we would be any closer to any other property. We back up to it now.

Maggard: Yes, I know that. So, it's not going to go beyond where you are now

Baptiste: No

Maggard: You are going to have a very quiet neighborhood.

Baptiste: Great neighbors. But you know what actually we joke but the grounds keepers back there are great neighbors. They do a little extra on your side

Members talking

Maggard: Is there a possibility that you could knock down some of those trees. And move your property line over a little bit.

Kindzia-Baptiste: That's the Costa's property so we have tried to reach out to them but we haven't heard back.

Conti: What are you talking about Marge?

Maggard: Well, the next-door neighbor Costa's I wondered if they could go visit them and see if they wouldn't sell some of their property to them.

Conti: I am confused. That goes even more landlock than theirs

Maggard: I know that



**ZBA2023-05B**

Conti: So, buying that property what's that going to do

Maggard: It would give them the frontage

Conti: No, they already have 100-foot frontage. They have no road

Serianni: No road access.

Maggard: Oh, ok I am sorry

Members talking

Baptiste: But we did try to buy it from them just to eliminate another land lock property. He's paying taxes on property that he's almost never ever going to be able to develop. So I we can take it off his hands and add it to ours. We have been trying to contact them years, several letters knocked on their door once

Warnick/Maggard: Nothing

Machelor: Not interested.

Kindzia-Baptiste: Yeah

Baptiste: and that's ok

Conti: How far does Colucci's road how far does that extension of Enda Drive go into his property?

Baptiste: 50 feet

Conti: 50 feet

Baptiste: It goes 50 feet past the telephone pole. I walked it with a rolling ruler a few days ago.

Conti: So, could is there a possibility to run your driveway off your that existing piece of property into that road

Baptiste: It doesn't make the situation any better. That's not any better than putting the driveway where I would

Conti: It would give you 50 foot of frontage

**ZBA2023-05B**

Warnick: It would be a tax liability for the guy at 915. Absolutely I wouldn't let you do it either

Baptiste: If I could get to my property from the street why would I get to my property from his driveway

Warnick: Right

Baptiste: I am trying to be the best neighbor possible. I wouldn't come down

Members talking

**Warnick: Motion forward we approve the variance as written on the application**

**Machelor: Ok**

**Serianni: Just make your findings first**

**Machelor: Ok we have a motion**

**Conti: We didn't close the open meeting yet**

**Machelor: Ok close the open meeting**

**Conti: I mean you still gotta go by the procedures**

**Machelor: Ok we have a motion on the floor. Does anyone want to second it?**

**Maggard: I second it**

**Conti: Can you repeat**

**Warnick: The Motion to approve the application as written**

**Machelor: Presented**

**Warnick: As presented**

**Machelor: Further discussion?**

**Conti: I would like to table it.**

**Heuck: I just wonder about the legality of it all having Colucci come back on it**

Conti: I want to table it personally

Members talking

Heuck: I would like to table it and get more consul on it as for the legality of this right here. Cause were walking into a time bomb we don't want it. James who's your attorney

Baptiste: I didn't think needed one I am a licensed architect and hired a civil engineer to help me with this design.

Heuck: Just wondered if you had one

Kindzia-Baptiste: We can get one

Conti: I don't know if you need one yet. Some of the legalities what Gary's trying to say.

Heuck: With Colucci owing basically that piece of road way in the future who knows what he could do or his let's say his survivors could do. And say well we don't want you to use that anymore

Baptiste: Well, were not using

Warnick: I wouldn't even say that's a roadway that's his driveway off the end of the road

Baptiste: If you please. I am turning into my driveway before I reach his property

Warnick: Where that yellow line is, is the end of the road. That's his driveway that's not a road.

Members talking

Conti: Now, how is that 23.75-foot piece your talking about just doing an easement. Where I feel that it should need to transfer property. I mean cause I know it's an easement but something could happen down the road that the new person buying this your old house comes. I get it. But then they come back and fight it and try to make a big stink over it.

Serianni: Just for clarification easement and an area of variance both of them run with the land.

Conti: I understand that but we also have seen weird things happen. I just feel that

Heuck: We want to protect him.

**ZBA2023-05B**

**Conti:** We want to protect you because the new owners I understand what you're saying but we have seen a lot weird stuff going on at times.

**Baptiste:** It's my intent to put up a fence along the new easement so that the properties are clearly delineated.

**Conti:** But the new owners could take that fence down.

**Baptiste:** I am putting it up like the previous discussion on my property on the new build property facing 945. So that the new owner of 945 could not take it down. Because it would be on my property.

**Conti:** Well, it's only an easement

**Baptiste:** On the easement

**Conti:** So, it's really not your property

**Baptiste:** I own them both

**Members talking**

**Baptiste:** So, if you're asking me to permanently transfer one to the other because your unconfutable with just an easement then I will do that. But it sounds like it's an unnecessary step. And an unnecessary delay we have lost several months trying to build this thing already.

**Machelor:** Alright well listen

**Warnick:** I have a question. Does the easement transfer to owner to owner on the property until the end of time as we know it right now?

**Serianni:** Yes

**Members talking**

**Conti:** I am just trying to protect him for future because if something happens and changes all of sudden now, you're fighting and now he says I want a million dollars for that piece of land you want to use. It was an easement before but now

**Baptiste:** It's an automatic loss in court because it carries over with the deed

**ZBA2023-05B**

**Conti: Today it does**

**Machelor: I mean you know. Alright I am going to call the question. We will see what we see. Is there anymore discussion on this other wise I am going to call on a vote. I have a motion on the floor made in the seconded. I would like to say all those in favor say AYE.**

**Members: AYE**

**Machelor: Opposed hearing none Lisa Poll the board**

**Lisa:**

**Joseph Conti- AYE**

**Gary Heuck- AYE**

**Norman Machelor- AYE**

**Marjorie Maggard-AYE**

**David Warnick- AYE**

**Machelor: Ok it's AYE Approved**

**Baptiste: Thank you sir**

**Adjourned**

There was a gentleman at the meeting from Ridge Road for LMK he was told to come back on June 8, 2023 to voice his concerns.

**Respectfully Submitted by**

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Lisa Wisnieski  
Building Dept Clerk

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Norman Machelor  
Chairman