

ZONING BOARD OF APPEALS

Town Hall 1375 Ridge Road Lewiston New York  
Thursday – November 7, 2019  
**ZB 2019-11**

Present: Conti, DeCastro, Heuck, Machelor, Maggard, Attorney Seaman

Presiding: Norm Machelor, Chairman

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

Pledge of Allegiance

Machelor: Welcome everybody. For those who haven't been to a Zoning Board meeting before, the purpose of the Zoning Board is to evaluate projects brought to us to see if they can be built within the Code that the Town has written. The reason it's called a Zoning Board of Appeals is that it gives citizens the opportunity to appeal the Code and ask if their project can be done and that we would give a variance, in other words vary the Code for a particular reason and then we vote upon it. We have a test that we apply to all of these projects so we have a way of knowing what could be done, what can't be done and so on.

Public Hearing opened

Mike & Amanda Buonopane, 5241 Fort Gray Drive, SBL# 115.10-1-31, requests a variance from Section 360-38 (2), Yards required to allow for a front porch 12.3' closer to the front property line. The property is presently zoned R-1, one family residential.

Machelor: Please come up and identify yourself for the record, name and address.

Mike Buonopane, 5241 Fort Gray, Lewiston, New York. Amanda Buonopane, 5241 Fort Gray Drive.

Machelor: What would you like to do?

Buonopane: We would like to build a portico over our front door. It extends out about 12' and put a small structure with a few steps to get up to it.

**ZB 2019-11A**

Amanda Buonopane: There's currently no covering at the front of the house. That would add on to it and we also had in our.....for a side stairway going up to the 2<sup>nd</sup> floor.

Buonopane: The side stair would be mostly in our back. No one would really see it. It's more about the front. It's the only one on the site line that would stick out. Both of our neighbors to our left and right are both in support. We feel it will make the front of our property a little bit nicer. We don't know if any of you have been through there but since we moved in last year, we uprooted a lot of dead trees and bushes. We took down some very outdated awnings that were on the front of the house.

Amanda Buonopane: They were moldy too.

Buonopane: Right now, the front of the house is really just a flat slate. We plan on getting the whole thing resided. We are going to do that next year. We would like to figure this in to our plan if we can.

Machelor: Currently your house is 35' from the property line.

Buonopane: Yes.

Machelor: We want to move it to 23' from the property line.

Buonopane: Yes.

Conti: The pictures show the front of it being curved?

Buonopane: Right now, that is the talk there would be a peak under our center window, some pillars and then the front of it would arch out, the steps.

Maggard: Is that with the stairs?

Buonopane: With the stairs yes. We assume the stairs will mostly be the rounded part, just one or two up on to the landing.

Heuck: How many risers?

Buonopane: Just one, but two steps leading up to the riser.

Machelor: Will that rounded part be covered as well?

Buonopane: That will probably protrude out a little bit from the covering. You'll have the stairs leading up and then the base platform will be completely covered. That way our guests cannot stand in the elements.

**ZB 2019-11B**

Amanda Buonopane: Right now, there is a cement step up for the porch and it will be pretty much at that same level. We are tearing out the cement that is there currently and just re-pouring it to fit the size and shape.

Heuck: Is there any other houses on that street that are similar as to the frontage? The depth from the road way to your house?

Amanda Buonopane: It's hard to say. When we went over that with the architect, he was showing us on the plans that it was at an angle there where it cuts in to our house so I'm not sure if it's similar on other houses. In terms of having a front porch built out, there is somebody more towards the end but they have a little bit of a different house design that does have a little bit of an overhead structure to it.

Machelor: Your house is at an angle. Are the other homes built the same way?

Buonopane: We think so because when the Architect did his sight line standing at our front door, everything looked in line. We think they all fall that same way.

Amanda Buonopane: All the houses on that street are pretty differently designed. The one right next door to us on the right side has a garage that comes out a little more and the house sets back a little.

Machelor: Is part of your request for this stairwell on the side? Is that part of your request?

Amanda Buonopane: That is a separate project. We are doing a covering on the back of the house too just to have a covered area in the back. We would like to double that as a walk out from one of the upstairs bedrooms and to also give an emergency exit area too. It would be an uncovered stairway just coming down. It's completely the back of the house. There is actually fencing between that and shrubbery.

Machelor: I'm asking because that area would intrude on the side yard setback.

Amanda Buonopane: Yes.

Machelor: That would be a separate issue even though it's on this drawing. I want to bring that to your attention that it would cause you to come back again.

Amanda Buonopane: We filed for that as well on the papers.

Conti: It's on the papers.

Amanda Buonopane: We were looking for 2 different aspects. They should be numbered.

**ZB 2019-11C**

Maggard: With that front porch, it's fairly decent size, would it stick out from the rest of the properties? I know that you mentioned that each one is a little different but would it stand out at all?

Amanda Buonopane: I don't think so. I think....when we put the flags to see where it would come out to, and when you look at that down the row, it's actually in an area that we've already, Mike had mentioned that we tore up a lot of dead bushes and things that were in there. There was a lot of overgrowth that was pretty much out that way.....and it's similar to some of our neighbor's yards too. It seems like it takes the place of that.

Maggard: In other words, there is a good balance there.

Buonopane: Yes.

Seaman: It looks to me like as far as the front yard setback you're currently 35' back and you're asking for a variance of 12.3' and then I don't see the same computation in terms of that side yard. Do you know what the amount of variance you are looking for on the side yard for the stair's scenario? How far into the setback will you be going? Do you know?

Amanda Buonopane: I don't know. The sizing is in the drawing but I don't know what the difference would be. It's just the stairway part. It's not the covering, it's an uncovered stairway that would end of being close to the side.

Discussion

Seaman: Are you asking for the stair as well as the ability to encroach with this additional room?

Buonopane: No, that right now is nothing.

Seaman: This tiny little portion of the stair here?

Buonopane: Yes, that's it.

Seaman: Did you guys follow that?

Amanda Buonopane: It's just an outdoor patio.

Seaman: The bold dotted line is the setback that currently exists. That lower left....

Conti: That lower section of the staircase.

**ZB 2019-11D**

Heuck: If someone is good at math the scale is  $1 = 1/16$  so you could figure out the number of feet.

Maggard: Was this patio there prior to you doing this drawing?

Buonopane: The front?

Maggard: The patio where the stairs are going?

Buonopane: No there is nothing there currently. We have our living room steps and we hope at some point to turn that in to a patio with a covering. We have not even started that yet. Our Architect suggested that since we would be here in front of all of you talking about the front that we tap on the stairs as well. That we could just be buttoned up and be prepared.

Maggard: The stairs are having no covering?

Buonopane: No.

Maggard: You are calling them safety?

Buonopane: We would assume they would be made of something durable, maybe a composite or something. We have 3 dogs. We don't want to shimmy them out the window.

Amanda Buonopane: We do keep rope round just in case. We have run through the scenarios of the what if's and being out of the house quickly. Our niece and nephew come and stay over so we tend to worry about them.

Machelor: The setback from the front is about a third of the space, so it's less than half which is good.

Amanda Buonopane: We should mention also that it's going to be mostly open. It's just the roof covering and the pillars around the sides. That's not going to be an enclosed porch at all.

Machelor: Thank you. Would anyone else like to speak about this issue?

Public hearing closed.

Machelor: Any more discussion? I'll entertain a motion.

**A motion whereas the Zoning Board of Appeals finds that pursuant to the prior discussions that the benefits to the applicant outweighs the detriment to the health, safety and welfare to the community to approve the variance request was made by Conti, seconded by Heuck and carried.**

**ZB 2019-11E**

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

**A motion to approve the minutes of October 2019 was made by Heuck, seconded by DeCastro and carried.**

Public hearing opened

The next item on the agenda was a request from Lori Pasquale, 439 Kenwood Drive, SBL# 87.18-2-58 for a variance from Section 360-194 A2, Fencing and walls, from the maximum height limit of 6' to 8' in the side yard and maximum height limit in the front yard of 4' to 5'. The property is presently zoned R-1, one family residential.

Machelor: Is there someone here to speak? Please come forward and state your name and address.

Lori Pasquale, 439 Kenwood Drive, Lewiston and my husband.

Mr. Pasquale: We built a fence according to the grade from our lot which is 6' from the top grade of our lot. However, he made a mistake obviously. We thought it was the right height for us to have privacy. The inspector said we have to take it down. We ask for a variance to leave it the way it is from our grade up.

Conti: What is the height of the fence in the front part of the property?

Pasquale: In the very front from our lot because I was going to fill it in a little bit would end up 4' but from the next-door lot would be 6'.

Conti: Your lot stands 2' taller than her lot?

Pasquale: Most of it yes.

Machelor: How many feet of fence did you build?

Pasquale: 65'.

Machelor: What heights are the 65'?

Pasquale: Like I said, our grade changes.

Machelor: Aside from the grade how high is the fence? How much is fencing?

Pasquale: 6'x65'.

**ZB 2019-11F**

Conti: The fence in the rear of the property from the front back, how high is that?

Pasquale: 6'.

Conti: 6' on your property and 8' from her property.

Pasquale: 8' from the next-door property.

Heuck: 90" I measured it.

Maggard: The fence looks like it has stilts on it.

Pasquale: All fences have stilts; all fences have posts.

Maggard: The bottom of the fence comes along here but there's a stilt.....

Pasquale: Yes, we were going to fill that in until they stopped us. We were going to put some treated 1'x6' and fill it right in but I got stopped.

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

Pasquale: I did after. We didn't get the permit right away. Let's review this. The day before the fourth of July my friend from Niagara Falls who did the fence came down and gave me a price. I was leaving to go to Florida the same day. I said when I come back, we will get the permit and we will do it. He said I have the whole weekend to do it. Can I go ahead and do it? I said okay I'll get the permit when I come back.

Machelor: Do you have a picture of the fence? I guess the point you're making is that before the fence starts there is a gap.

Pasquale: The posts are showing. I was going to cover them but I didn't have a chance to cover it because they stopped me.

Machelor: If you had covered it, it would have been more of a solid fence, right?

Pasquale: My lot is 6'. There is a gray area? I don't know I'm not sure.

Maggard: That would have been another 7' because of the gap if you filled it in. It would have made the fence at least 7' if not 7.5' high.

Pasquale: From next-door yes. But we understand there are a lot of fences around. I don't want to go around and get pictures where they are elevated and then the ground drops to next-door and they have 4' or 6'.

**ZB 2019-11G**

Machelor: It's hard for the Board to judge that sitting here what it looks like. That's a problem.

Conti: The property goes from your lot here and it drops immediately? There is no grade?

Heuck: It's based upon the concrete that he's got there, the driveway and walk way alongside the house but its elevated which makes the contour of the property different from his neighbor's property.

Conti: The actual property itself is the same level?

Heuck: It looks like it from the street.

Conti: Coming from the street you added a concrete walk-way alongside your house which raised the property. That is not your property.....

Pasquale: My zero, zero grade is my garage floor. When I remodeled the house my zero zero grade is my garage floor. My sidewalk is zero zero, the same as the garage floor.

Conti: I drove by also to look at it. I've never seen a lot that does this.....you added to bring it up but the actual original grade goes up.

Pasquale: If the garage wasn't going to be there and the sidewalk wasn't going to be there.

Conti: Because you built it up.

Heuck: When you made the addition on to your house that's when you built it up.

Pasquale: Yes.

Seaman: Sir your application that you submitted does not supply the Board with a ton of information. Some parts you haven't completely filled out. The first question which the Board is required to consider by law is whether or not the benefit that you seek to achieve could be found in some other way other than by seeking the variance. The application has a N/A statement. The Board is charged by law to consider that. I will ask you, what benefit do you obtain from the fence and could it be achieved in any other way?

Pasquale: The only benefit we want is privacy. Privacy is the big word, that's it.

Seaman: Can you achieve that privacy by having your fence at the level that is described by the Code?

Pasquale: If I have to lower it down, I will have a 2' fence. My lot right is 2' high and I drop it down in the front, I'm supposed to have a 4' fence in the front which is only one section. That



**ZB 2019-11H**

would give me 2'. On the side if I drop it down it will give me 4'. I don't have 6' anymore. Really, it's not privacy.

Maggard: On your application this tells me that you said it's not self-created because based on my property grade. It was self-created because you did the property grade. You added to your property and brought it up.

Pasquale: I submitted the plans and they were approved 4 years ago.

Maggard: I'm not saying they weren't approved for that but the fence was not approved.

Pasquale: Yes, you are right.

Maggard: That's what I'm saying. It was self-created.

Pasquale: I understand that.

Maggard: You mention on your application that it was not self-created.

Pasquale: I'm sorry I apologize. We just want privacy.

Maggard: I went by there. It looks terrible.

Pasquale: It looks terrible? I think my house improved the neighborhood.

Maggard: How close to the house are you with the fence?

Pasquale: Probably 4'.

Maggard: What about your neighbor?

Pasquale: My neighbor, 15'-20'. We just want privacy. We don't want to talk about what we go through the summer and everything else. When we come home, we just want the fence for privacy. We don't care how everybody else lives. This is strictly privacy nothing else. If I have to lower it down, I will probably have never done it.

Conti: That is why you get a permit before you build. That is the whole idea of getting it.....

Pasquale: It's my fault. I should have said let's wait. This guy 22 years doing fences. I thought he knew what he was doing. I thought he knew the codes but he only knows the falls.

Machelor: My problem is I don't have a good idea and picture in my mind of how tall this fence is. Aside from the grade part.....

**ZB 2019-111**

Heuck: Excuse me if I can interrupt you, the lady in the back says she has pictures.

Seaman: If you can state your name and that you took the picture please.

Linda Carlson: I have taken all these pictures. This is the cement grade they put up. That cement grade is 12" off the ground which they built up. Before that our property lines were level. Then you go down further and they have an 18" cement grade. They went from 12" up to 18". The fence posts are at grade level. They installed the fence itself on the cement pad which brings it up to 8'. The front fence extends from their garage out probably 20' to the front of the yard. It's 57" tall in the front, not 48", 67" I'm sorry. That is what the side looks like (picture) that's how far out it is from the front of our house. There is the tape measure showing 67" off the ground. Just because they built up their grade level, they shouldn't be allowed to have an 8' fence. I don't care if they have a fence, just put it within code. As far as privacy, why do they need privacy on the side of their garage? No one is on the side of their garage.

Seaman: For the record can you state your address.

Carlson: 435 Kenwood Drive.

Machelor: Thank you. Anybody have any more questions? Mr. Pasquale we will excuse you and we'll keep the public hearing open.

John Carlson, 435 Kenwood Drive. As he mentioned on July 3<sup>rd</sup>, July 4<sup>th</sup> it all started. We were out shopping and one of the neighbors noticed the fence going up and told the people that were building it, it's facing the wrong way and it's too high. They called us. When we came home, we called Tim Masters and he said we are sending a truck out to stop it. They sent the truck out and they stopped it. It stayed there for a few days. Apparently, there was no permit yet. When they came home, they got a permit and they turned it around to face the right way but never did anything with the height. We went to a board meeting and they said they are going to give him 30 days. After 30 days nothing happened. We called Mr. Broderick and he said he was going in front of a judge and the judge will fine him \$50. a day after 30 days. That didn't happen. They come here now to get bailed out. You said it again your main purpose is to find out if they can build it, not after they build it. We had several neighbors come over and say how they dislike it. We had one neighbor come over and saw it and she said to our face do they hate you that much? You know how bad it is. We don't mind a fence. We thought when the fence went up it would be within code. It's far from it.

Mrs. Carlson: They have nothing in the back yard. It's only from the back of the garage to the front of the house. What is the side code?

Heuck: 6'.

**ZB 2019-11J**

Carlson: I don't know what privacy between 8' and 6'. Why do they need privacy on the garage? That's what I don't understand.

Machelor: Thank you. Anybody else in the audience that wants to address this?

Pasquale: I just want to say 2 things, me and my wife don't hate anybody, nobody, not a sole in the world. Whoever says that, they don't know what they are talking about. I wanted to make that clear. This is ridiculous but thank you.

Public hearing closed.

Machelor: Any more questions from the Board? I'll entertain a motion.

Heuck: I have some legal questions. If he is required by law to take it down, then he has to put it back up does he still have to have a variance?

Seaman: I think what would be before you guys to make a determination on right now is just simply the request for the height variance. I would advise the Board that's the only thing you need to consider and to make a ruling on at this point in time. As the case is handled within the Town Court relative to what's going on what may go on there is slightly different position that you don't have to consider at this point. We can talk about the practicalities of it and how they would address or remedy the situation if the Board was to determine that they're not granted this height variance. They would have to come in to compliance they would have to take it down or they would have to cut part of it or something along those lines to come in to compliance or they would ultimately again be sited by Mr. Masters.....

Pasquale: Why don't we just do whatever the inspector tells me to if that's the case? Wouldn't it be the most sensible thing to do?

Machelor: I'm still concerned about the point where you measure how high the fence is.

Conti: From what he's saying is Tim would go out and say here is where you have to cut it to bring it to within Town Code.

Carlson: He wouldn't have to cut it. He would just have to bring the boards down to the grade level.

Pasquale: I will cut the top. It doesn't matter what she says, as long as I bring it to the height.

Seaman: Right now, you procedurally have a case in front of you. You can do one of two things; you can make a determination or you could leave the public hearing open and table it and see what happens over the course of the next month. If you prefer to do that, we can

**ZB 2019-11K**

reach out to Mr. Masters to come out and see if they come in to compliance and the whole thing may become moot. You have one of those two options. The other option would be to make a determination now and that would settle the matter for the Board at this point in time. You can do one of those two things.

Carlson: I have a note from Tim Masters saying that it could not be put up the way it's up. I have it in an email.

Seaman: The option in front of the Board right now are to either table this matter, leave the public hearing open for the time being, table it and advise everybody we will bring it back at next month's hearing and in the meantime see if the applicants come in to compliance with Mr. Master's requirements. That would be one option which might be a good option. The other option would be for you guys to make a determination right now one way or the other whether or not you grant the variance.

Mr. Carlson: They should come to the Board before they build it and not after they build it.

Conti: Nobody is disagreeing with you on that. That is not what is in front of us right now.

Mrs. Carlson: Why are they allowed to put things up without permits?

Conti: Nobody is allowed, that's not what is in front of us.

Seaman: If I was you guys it's not a bad decision based on the applicant's position that he's willing to come in to compliance for you guys to table this, leave the public hearing open but table this for next month.

Mrs. Carlson: How long will it be tabled? They go to Arizona.

Mr. Carlson: It keeps getting tabled.....do something!!!!

Seaman: You've heard objections from the neighbors with regards to tabling this matter. You can take that in to consideration however you want.

Maggard: If we waited for next month's hearing it would not be.....

Pasquale: Either way we would request the inspector to come over and show me exactly what he wants. I don't want to do it wrong.

Maggard: When do you go to Arizona?

**ZB 2019-11L**

Pasquale: We're supposed to go the end of the month. No matter what I would like the inspector to come over. I don't want to do this and have somebody come over and say I did it wrong. I want the inspector to come over and show me where it has to be.

Mrs. Carlson: He knew the codes when he got the permit.

Pasquale: It's the difference in grade. It's a gray area.

Maggard: You created that grade.

Pasquale: Everybody creates grades. Whenever we build a house.....

Public hearing closed.

Seaman: I'm going to recommend that it's not closed permanently, that you leave it open and that you table this for a month. Someone would need to make that motion. Or you can make the determination. The applicant is indicating he is willing to come in to compliance with the Town Code. You could also just make the determination if you want to one way or the other.

Maggard: I don't think we could wait a month.

Seaman: Then make a motion.

DeCastro: If we deny it, Tim can go out there, they can put a new one in. We're not going to approve it as it stands so why keep it open?

Seaman: Then someone entertain a motion what you want to do with the application that's in front of you right now.

**A motion to deny the variance request for the fence height was made by Maggard, seconded DeCastro and carried.**

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

Previously tabled was Danielewicz, Ridge Road, Interpretation

**A motion to un-table the interpretation was made by Conti, seconded by Heuck and carried.**

Damon DeCastro, I am again recusing myself.

Seaman: Let the record reflect that Damon DeCastro has recused himself from this matter and has removed himself from the bench. I believe the public hearing has been held open.

Machelor: Mr. Bartolomei, if you would.

## ZB 2019-11M

Bartolomei: Let me tell you what I did since I was here last. Thank you for having me here again. The matter had been referred to the Niagara County Planning Board. A couple days after our last meeting I appeared at the Niagara County Planning Board on the then matter that had been served to them which was a combined interpretation and use variance application. At County Planning Board what we found was that the matter that had been referred to them was not the right matter. The reference to them was simply stated as "can a property owner in this district operate commercial activity?" That was what was given to the Planning Board. What I say to you is that is what you sent to the Planning Board, then shame on you. That was not the issue at all. What it did was posed the matter for them that of course a person can't do a commercial activity in a rural zone. Anyway, we did get to talk about the interpretation of the law. I explained to them that there were no farmers on your Board. We talked about the interpretation of the law that was in my opinion was the proper interpretation that agricultural equipment, vehicles can be stored in barns on a farm. As luck would have it there was a farmer on the County Planning Board and his response was of course what else would they do? He asked if they could recommend to the Town Zoning Board that that is the correct interpretation? Fairly they could not because the matter that had been referred to them was can a person do a commercial activity in a rural zone? That's nonsense, that's not the reference that was to go to the County Planning Board. They couldn't act on it so what we did was we withdrew without prejudice with the right to bring it again. Now as I stand before you what you have in front of you is only the application for you to interpret the Code as I think it should be interpreted as we have presented to you it should be interpreted. There were a number of things I read painfully the transcript of our last meeting here. I read it through 3 times. In a lot of ways, it was incredible. The questions that you raised and the issues that you thought were involved were whether or not a person who didn't own a piece of equipment that could properly be stored in a barn could still store it in a barn if someone else owned it. You also raised the issue of whether or not if the activity that the equipment is used is not just on the farm but is in other areas can it still be stored in the farm. You raised that. You also raised whether or not in fact it was a storage unit because it was not owned by the farmer who had the equipment in his barn. These are the things that you raised, the issues and that I asked to come back on to provide some things to you that you could then consider as part of the interpretation. One of the things I wanted to provide to you was the concept of farming that you were flying in the face of the concept of farming that involved the use of equipment belonging to other people being stored on the farm that's most convenient to store that equipment regardless of who owns it, regardless of where it's being used otherwise than on that farm. We got a statement signed by a number of farmers in Lewiston as well as Cambria, some in Wilson and you have that statement I understand. Have you all seen it? Shall I read it in to the record or is it enough for it to be gone in to the record in writing?

Seaman: Either way, it will go in to the record in writing.

Bartolomei: What it says clearly is what I said that farming is a common practice in farming to store agricultural equipment in the barn of a farm of a person that doesn't own the equipment. It's common in farming for equipment that is used on other areas to be stored on a farm in a

**ZB 2019-11N**

barn on the farm that does not own the equipment. It says it is part of what farming is. It's part of the communal nature or aspect of farming. This is what I tried to tell you. Unfortunately, you didn't have a farmer there. I am going to give you....

Seaman: Can I interrupt or do you want me to save my questions?

Bartolomei: Why don't you save them. What I'm going to give you is another copy of the statement because from the time that it was signed by a number of farmers, there was an additional signature added. The additional signature is Jeff Baker who is the councilmen in the Town of Porter and also the Deputy Supervisor who also added his name to this statement as acknowledging the statement. I think the issue of whether or not it's a common practice in farming to do exactly what is being done here store a piece of agricultural equipment or a vehicle that is used in agriculture, I show you that it is that. I ask you to consider that and not fly in the face of farming throughout this area because it's what's done. It is how it works. I apologize I was using the term columbine with you; I meant a combine. I think you all understood what a columbine is. That probably is the vehicle that goes around to more farms than any other one but is stored on a farm. The farmer on the Niagara County Planning Board said I don't know who the hell owns the vehicles on my farm. I just know they are agricultural vehicles and I can store them there. That is the same as what this statement says. Mr. Seaman, if you had a question or something about the statement, I would be happy to take it.

Seaman: The communal aspect of farming as I read the statement that you have signed by local farmers is, it describes a scenario where farmers are sharing each other's equipment for the harvesting of crops and things along those lines. They will also share each other's barns and things along those lines. It's a sharing like you wrote in here communal aspect of farming. What I'm wondering is who shares Parkhill's equipment with them?

Bartolomei: It's used on, all throughout the entire area.

Seaman: Do other tree trimming companies use Parkhill's equipment?

Bartolomei: Not tree trimming companies, other farmers, other land owners.

Seaman: Are you indicating Parkhill is a farmer?

Bartolomei: No, other farmers and the farmer who owns the barn that vehicles are kept in.

Seaman: Uses Parkhill's equipment?

Bartolomei: This is Parkhill's equipment.

Seaman: You're telling me they lend it out in a communal....

**ZB 2019-110**

Bartolomei: It is used for the purposes that the equipment was designed for which is tree lot managing....

Seaman: When you say it's used for that Sir; you mean to tell me that Parkhill gets hired and brings the equipment out and will cut down a tree or service a tree but it's Parkhill that is using that equipment correct?

Bartolomei: What .....have you read the statement?

Seaman: You don't want to answer the question?

Bartolomei: It says the equipment of other farmers and services. It says that.

Seaman: The way that I read your statements again indicates to me....

Bartolomei: It's not my statement, it's the statement of these farmers.

Seaman: Did they write it or did you write this?

Bartolomei: I didn't write this, it's typed. I didn't sign these signatures.

Seaman: You're telling me you didn't write this because it's typed?

Bartolomei: I drafted it before it was typed, of course I did.

Seaman: It's a statement that you put together. To me even though you put it together, when I read it, it indicates to me that the communal aspect of farming includes the sharing of equipment and the sharing of barns with a practice towards a similar concept of harvesting and gathering the goods of farming. What I'm asking you, who other than Parkhill uses Parkhill's equipment? Who shares Parkhill's equipment?

Bartolomei: All the people who the equipment is....

Seaman: Whoever hires Parkhill, is that what you're telling me? Whoever hires Parkhill. Is someone else sharing?

Bartolomei: I suppose. It says it's a common practice in front of me that agricultural equipment including vehicles used for agricultural purposes are stored on our farms. The equipment is used on many farms is stored conveniently located in that barn.

Seaman: It's my understanding the Board has requested that someone from Parkhill come to answer questions tonight.



**ZB 2019-11P**

Bartolomei: Mr. Parkhill is presently in Pittsburgh at a conference for tree lot management and conservancy and forestry. He did submit a letter and the letter very clearly indicates that he does no business at this farm. He business is done at 3171 Ridge Road which is in the Town of Cambria. That is where he does business. There is no business what so ever done here. It explains what his vehicles are. It explains that they are agricultural vehicles and being kept in this barn for convenience.

Machelor: We did ask him to come so we can question him.

Bartolomei: Sir, this is a public hearing just so you understand the nature....

Seaman: I'll advice the Board on the law for a public hearing.

Bartolomei: The public gets to speak at the hearing, that's about it.

Machelor: Anybody can speak at the public hearing including Mr. Parkhill. But he's not here so he won't be speaking. His letter is not adequate. It would be adequate if he was here and I could ask questions of him.

Bartolomei: Try to understand this if you can, you can check with your council, this is a public hearing sir, this is a public hearing where people get up to speak about the matter before the Board. The purpose of this is not so your attorney can cross examine the person speaking so you can cross examine the person....

Seaman: Sir it's not your job to advise the Board about what the legalities of the public hearing are. I'm just letting you know that's not your job. Please if they need advice as to the legalities....

Machelor: Mr. Bartolomei, would it be improper for us to ask Mr. Parkhill to talk about what he does in that barn?

Bartolomei: He did that.

Machelor: He did not. He's not here.

Bartolomei: His letter does.

Machelor: His letter is not adequate. Who wrote his letter?

Bartolomei: He did. He signed it.

Machelor: I know he signed it.

**ZB 2019-11Q**

Bartolomei: He represents the statements that are in the letter....

Conti: He authored the letter?

Bartolomei: Are adequate to cover all the questions.....

Machelor: I would like to talk to him.

Conti: Did he author the letter himself?

Bartolomei: Parts of it yes.

Conti: So, you did it?

Bartolomei: Of course, I did.

Conti: That's all we asked. We asked who authored the letter you or him?

Bartolomei: I said, he told me what to put in and I put it in. Actually, that's how all letters are done.

Maggard: In your letter, yours or his whichever, at the very end one of the last sentences, it says: Parkhill states my company has no business arrangement with Mr. Danielewicz. Now if he has no business arrangements, why is his trucks parked in that garage, or barn, whatever you want to call it.

Bartolomei: This is the very point that you somehow don't seem to get.

Maggard: I don't get it because....he has to be in business. Parkhill is in business.

Bartolomei: He is in business, but Mr. Danielewicz is not and is not doing any business out of there. Let me tell you the other thing I did, I want to tell you the other thing we've done since is I've done a little more research on it and I've also contacted some Zoning Board of Appeals in other municipalities throughout the State. The answer is consistent from all of the them. If your statute, if your Code meant to say that agricultural vehicles can be stored in barns except when they are otherwise used in commercial enterprises, you might have a whole different story here. Your Code doesn't say that. Your Code says that agricultural vehicles can be stored in barns on farms. That's what it says. These are agricultural vehicles that are being stored in a barn on a farm. They comply with your Code. Who's doing it doesn't matter. The identity of the user with your Codes does not matter. It's the use. You're doing land use. Is the use compliant with your Code and the answer is yes, vehicles that are agricultural vehicles are being stored in a barn? It is not necessary for the identity of the vehicle owner to be an issue. It's not an issue. The question is, is the land being used in accordance with the Code? That's it. Your

## **ZB 2019-11R**

Code does not accept vehicles that are otherwise being used in commercial ventures. If you want to change the Code, change the Code, but it doesn't say that now. All it says agricultural vehicles can be stored in barn on farms. That use is what's being done here. There is no identity necessary to be as ownership that is a part of whether or not the use is. I think that's the problem. I know you seem to be set on interpreting this Code in one way which is different than my opinion and the opinion of all the council from all these Zoning Boards that I called as far as Long Island. You may have found something in your Code that is a flaw, change it if you want but you can't change it there. You would have to do a legislative act to do it. Add then to your Code that says unless except if these vehicles are being used in commercial ventures, otherwise that they can't be stored there. If you want to do that change the Code. The Code doesn't say that right now. This Board can't change it.

Seaman: Are you asking the Board to make an interpretation that Parkhill's vehicles are agriculture vehicles?

Bartolomei: Absolutely. Do you think they are anything else? Why are you chuckling Mr. Conti?

Conti: I'm reading something here.

Seaman: I would just note that even though Mr. Parkhill is not here he does say inclusery that his company's equipment vehicles are designed for the purpose of tree management, tree lot management, wood lot management, conservation, forestry. He does not put agriculture in that list.

Bartolomei: Read your Code then. The agricultural uses are defined in your Code to include those uses. That's what your Code says. Agricultural vehicles are vehicles if they are used for these purposes.

Seaman: That's the thrust of your argument is that Parkhill's vehicles are agriculture vehicles? That is one of the thrusts of your argument?

Bartolomei: Yes, they are used for the purposes that are set forth in your Code that the vehicles used for that purpose can be stored on a farm. That is what your Code says. You may not like it but you obviously don't like it and they obviously don't like it, but it is what your Code says. It follows the Code. If you don't like the Code, change it. But don't abuse this guy for it. It's what....

Heuck: Is there a tree farm on that land where those vehicles are being stored?

Bartolomei: How do you define a tree farm sir?

Heuck: I'm asking you a direct question, is there a tree farm?

**ZB 2019-11S**

Bartolomei: I don't know what a tree farm is. Is there a wooded lot, is there a treed lot? Yes, absolutely.

Heuck: A treed lot that is being used for forestry, in other words for let's say Christmas Trees which would be a form of what I'm talking about.

Bartolomei: I don't think so.

Heuck: If you read the Code properly....

Bartolomei: I did, I wrote most parts of it sir.

Heuck: Forestry and conservation uses? Activities and structures related to that?

Bartolomei: I've read all of it. I understand it quite well. What is your point sir?

Heuck: My point was that right there. They are not using that equipment on that land right there for tree farming.

Bartolomei: I understand what you're saying and sir the only time an agricultural vehicle can be stored on a farm is if that vehicle is only used on that farm. Sir you are wrong. Your Code doesn't say that. The Code says the exact opposite. It applies to use; it doesn't apply to who is using it.

Machelor: I suppose Mr. Parkhill could use his equipment on non-agricultural land too. He could take a tree down in the Village for example.

Bartolomei: It's the nature, what is the vehicle designed for.

Machelor: Cutting trees.

Bartolomei: Cutting trees, trimming trees, serving trees, spreading trees, all of those things. They all come within the definition of the tree lot management, of forestry, of conservation. It's a definition, what is this vehicle? He can't store a school bus on a farm because the nature of that vehicle is different. That is to transport people from one place to another. This vehicle is to do the very things that the Code defines a vehicle which is agricultural can do. It's specifically designed to do that. It's the nature of the vehicle not where it's used. That's not it at all. It's what kind of a vehicle is it and it is agricultural vehicle and it's being stored in a barn and it's allowed under your Code.

Heuck: It's a commercial vehicle, plain and simple.

**ZB 2019-11T**

Bartolomei: And yes, if that vehicle is used in some other place where it's not a treed lot, it's not a forest or.....it doesn't mean anything. It's what kind of vehicle it is.

Machelor: I hate to say this but I'm going to say it this way, when we first heard from Mr. Danielewicz he mentioned many times that the reason he was here was in order to be able to use that property that he spent a lot of money on to reimburse himself for the expenses of building that barn. We've gone all the way from reimbursing his expenses for that barn to that he's just a good neighbor and he's just allowing the Parkhill farm people to use his barn and he doesn't recover anything from that?

Bartolomei: First of all, the manner you're referring to was a land use application that's not before you anymore. Secondly Mr. Parkhill has indicated to Hugh Gee as paying no rent to Mr. Danielewicz at this time. Mr. Danielewicz has indicated that he's receiving no rent. He had done some work on his farm and that he's keeping his vehicles there and there is no money changing hands now. What happens in the future it's possible that he could work out some kind of rental or lease agreement?

Machelor: Does anyone else have any questions?

Maggard: How will we know when that period of freedom of free because paid?

Bartolomei: We don't know. Possibly Mr. Parkhill will say if I have to pay for it, I'm going somewhere else. It's possible but at this point there is no agreement, there is no agreement that says after a certain date you are going to pay me this money. There is nothing like that. Right now, they are stored there.

Maggard: It wouldn't change the interpretation of your Code anyway.

Machelor: You're assuming that we agree with your interpretation which I don't agree with your interpretation. The fact that you went to the Niagara County Planning Board and pitched your case there.

Bartolomei: You went there, you referred the matter to the Niagara County Planning Board. I didn't do it. I had to appear there by notice to them.

Seaman: It was referred to the Planning Board under the use permit application.

Machelor: Not under the interpretation.

Seaman: The original application.

Bartolomei: Actually, you didn't send either. Your reference on one page and it said can this guy do this commercial activity in this rural area.

**ZB 2019-11U**

Machelor: That is what the application asked for. I have it right here. Do you want to see it?

Heuck: I would like to ask if we can go in to executive session? There are some legal things that I would like to discuss.

Machelor: I think that's a good idea.

**A motion to go in to executive session was made by Heuck, seconded by Conti and carried.**

Public hearing still open

Machelor: I will open the meeting again and ask Mr. Bartolomei if you have anything further to add?

Bartolomei: Not really. I just do have a question I don't know if it's normal for before the Board goes in to executive session that they have to state the reason they are going in.

Seaman: They did, it was to have conversation with their council. They state for consultation with their council.

Bartolomei: I have nothing further.

Machelor: Is there anyone else that would like to address this issue? I would like a motion to close the public hearing.

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

Machelor: We're going to close the public hearing and render a decision within 31 days as required by the law.

Bartolomei: Thank you.

The next meeting will be December 12, 2019, at 6:30 P.M.

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

Respectfully submitted,



Sandra L. VanUden

Zoning Secretary

**ZB 2019-11V**



**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 November 7, 2019, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Mike & Amanda Buonopane, 5241 Fort Gray Drive, SBL# 115.10-1-31, request a variance from Section 360-38 (2), Yards required to allow for a front porch 12.3' closer to the front property line. The property is presently zoned R-1, one family residential.

Lori Pasquale, 439 Kenwood Drive, SBL# 87.18-2-58, requests a variance from Section 360-194 A2, Fencing and walls, from the maximum height limit of 6' to 8' in the side yard and maximum height limit in the front yard of 4' to 5'. The property is presently zoned R-1, one family residential.

Information concerning this requests is 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  
#N258671

10/31/2019