

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York  
Thursday – October 11, 2018  
ZB 2018-10

Present: Heuck, Maggard, Conti, Machelor, Baker, Balassone

Presiding: Norman Machelor

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

Pledge of Allegiance

My name is Norm Machelor. I will be the acting Chairman for tonight's meeting. We are going to change the agenda a little bit.

**A motion to approve the minutes of September 2018 was made by Heuck, seconded by Balassone and carried. (1 abstention)  
Heuck Aye, Conti Aye, Machelor Aye, Baker Abstain, Balassone Aye**

Machelor: We are going to change the order in which we did the agenda tonight. We are going to go directly to item D, Decision, Code Interpretation, William Kraft, Swann Road, Interpretation of Section 360-163, regarding noise. During our last meeting we extensive discussion of this issue. We had a public hearing where people spoke for quite a long time. Our charge last time was to decide among ourselves or independently as a matter of fact whether or not we agreed with the interpretation of the Town Code by the Building Inspector, Mr. Masters. We aren't going to have any public discussion of this tonight. All we are going to do is vote yay or nay on that issue. I'm looking for a motion from someone on the Board whether or not we agree with the interpretation of the code.

**A motion that we agree with Tim Master's interpretation of the law was made by Balassone, seconded by Machelor and carried.  
Heuck Nay, Conti Aye, Machelor Aye, Baker Abstain, Balassone Aye**

The next item on the agenda was a request from Victor & Kristina Muto, 705 Raymond Drive, SBL# 87.20-2-55 for a variance from the required 15' side yard setback to be 4.51' from the property line to allow for a 16'x13' shed. The property is presently zoned R-1, one-family residential.

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Heuck: Mr. Chairman, I have to recuse myself from this. The substitute will be sitting in my place.

Machelor: The substance of this is that last year this Board approved the placement of this shed to be 6' from the (2 years ago) side yard and 6' from the home. A subsequent measurement of this shed found out that part of the shed is only 4.5' from the side yard boundary in one of the corners. Mr. Muto is asking that we approve an additional variance of 1.5' from the original variance which was 9'. What would you like to say?

Mrs. Muto: We are requesting that additional variance.

Conti: The original variance was originally given 2 years ago, is there a reason why you didn't follow that?

Muto: We didn't put up the shed specifically. We hired someone to do it and that's where they put the shed and they built it a little larger than we had originally paid for.

Machelor: Was it pre-made or was it made on the spot?

Muto: It was made on site.

Balassone: Is that shed on a concrete slab?

Muto: No it's not but we don't have any room to move it because on the other side of it is our pool equipment.

Balassone: To the rear of the property?

Muto: On the side of the shed. It would be on the side of the property.

Conti: The neighbor's side or the house side?

Muto: House side.

Conti: So you can move it straight back?

Muto: We cannot because we have a pool behind it.

Conti: Directly behind the shed?

Muto: Not directly behind the shed but our pool is....we can't move it.

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Machelor: Can you come up and let me show you this. Where is your pool?

Muto: Right here (survey) that was the reason for the variance because we couldn't put it in the corner. It wouldn't fit so we asked to do it on the side of the house.

Machelor: Do you know what this dimension is here between your shed and house?

Muto: 6.6"

Machelor: Do you know if you moved it closer to your house you would have to fire wall it?

Conti: Right now the way it stands even if for some chance it gets approved tonight, that side going towards the neighbor's house has to be fire proofed.

Muto: We understand that.

Machelor: That's if we approve the variance.

Conti: That's what I said if we approve the variance.

Machelor: If we approved the variance and she wanted to move the shed closer to the house then she would have to fire proof that side.

Muto: We physically can't because on this side of the shed here there is an air conditioning unit and pool filter. There isn't room to move it to the left towards the house.

Machelor: There aren't many alternatives.

Maggard: Have you consulted with the contractor that put it there?

Muto: No we have not.

Maggard: That would be my first area because he wasn't supposed to put it there. Am I correct in assuming that?

Muto: Yes.

Balassone: He built it larger than he was supposed to also.

Conti: Which is great if it was within the perimeters of the variance that you got. It's supposed to be 15' from the lot line. I don't know if I was on the Board or not but that Board gave you a lot of lenience on that considering they took 9' down to 6' and then he turned around and

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didn't put it where it was supposed to be. It really falls back on the contractor to say either he is going to have to remove part of that shed and rebuild that wall to come within the variance.

Muto: There is no way to have this variance approved?

Conti: I didn't say that. I said if it doesn't get approved tonight the next step would be to go back to the contractor....

Muto: What would be the reasoning for not approving it? What is the reasoning for not approving this variance?

Conti: The substantiality of the variance from 15' to now less than 5'. The variances are put in place to keep the Town within not looking like a city basically. If we approve yours from 4' to the lot line and then your neighbor puts something that's 4' from the lot line and now the whole character of the neighborhood and Master Plan.....

Muto: Even if we got a letter from the neighbor?

Conti: It wouldn't matter. It has no bearing on it. If the Zoning Laws are stated within Town Code that we are here to uphold them within the Master Plan. They gave you a very good variance initially of 9' off the rulings and then they still built it wrong. The fact that you got one and you didn't follow the variance they gave you initially.

Machelor: Do you have a bill of sale or anything to say what size you ordered?

Muto: No.

Machelor: Like Joe said it's kind of the contractor's responsibility to do what he was paid to do.

Muto: We didn't hire, we had the Amish come and build it so I don't think going back to them and asking them....

Maggard: They would stand behind their building. I've always found that to be true. The original variance that you received was very substantial.

Muto: Ok.

Machelor: It's kind of an odd size. It's not quite square. It's a little more than 16' and almost 14' wide. If it had been 16'x12' for example instead of 13.5' you wouldn't be 1.5' over the line. I don't know why they did that. They probably weren't aware of the property line.

Muto: It's an odd shaped lot for sure.

Baker: Do you know the dimension here between the pool and where the shed exits now roughly?

Muto: No.

Baker: Is there any space there?

Muto: Yes there is some space.

Conti: I'm not sure what the Town law is as far as any kind of structure away from a pool.

VanUden: 6'.

Machelor: I was hope that this would have any other structures that are in the way ....included.

Muto: I'm not sure why they didn't because we just had this done.

Machelor: Particularly since it's an in-ground pool.

Conti: You don't know how far the shed is from the pool?

Muto: Not off the top of my head no.

Machelor: Anybody have any further questions? How about hearing from the public? Is there anybody here from the public that would like to speak to this issue? Well hearing none I'm looking for a motion.

Public hearing closed.

**A motion to deny the variance request based on discussions tonight that the benefit to the applicant is outweighed by health, safety and welfare of the community was made by Conti, seconded by Maggard and carried.**

**Maggard Aye, Conti Aye, Machelor Aye, Baker Aye, Balassone Aye**

Muto: What happens going forward?

Conti: You have to come within the original specs from the variance you received 2 years ago. You have to be within the 6' from the lot line.

Muto: Do I apply for another variance and come back?

Conti: You still have the original variance that was approved that gave you up to 6'.

Muto: The next step would be to correct it.

Conti: Correct it and then contact Tim and he will come out and re-measured and then get approved.

The next item on the agenda was the previously tabled variance request for Adam Bowman, 4020 Lower River Road, SBL# 73.00-1-1.3 for a front yard and side yard setback.

**A motion to un-table the variance request was made by Heuck, seconded by Balassone and carried.**

Machelor: The last time you came you asked for a variance to be 21' from the property line.

Conti: No, the last time they were here they were at 10' and now you've reapplied and the paperwork I have now you're at 21'. Do you want to explain?

Burton: What we did, the last time we were here we asked it to be tabled so we could go back and re-access the design and where the placement was on the property to help bring it further from the road but not set it so far back that it imposed a greater financial burden to build that far over the gorge. Looking at it we were able to push the house back so that we are now 21' from the edge of property and then it also puts us 31' from the edge of pavement.

Balassone: What is the 21' dimension from?

Burton: The property line. This also puts it in line with the house to the south which is in the Town and at 21' from the property line.

Machelor: Did you change the shape of the house as well?

Burton: No.

Conti: You're still looking for the north side setback to be 10' correct?

Burton: Correct. The house width and depth stayed the same. We just pushed it back. Also here tonight is Ed L from Glynn Engineering if anybody had any questions as far as soil stability and the soils where we are trying to place the house.

Conti: That would be more for the Planning Board. Our biggest thing here tonight is to approve or deny the 21' and the 10' from the side.

Burton: I thought since its geotechnical .....on where we are trying to push it back.

Parisi: I think it might be relevant in regards to the burden and the ability to move the house and get a further variance.

Ed L, Senior Geologist, Glynn T engineering.

Machelor: Tell us how you were able to get another 11' out of this.

Ed: Basically the larger percentage of the footprint that we could have on the upper terrace, the easier it's going to be for construction. The soils are of highest strength up at the top of the terrace and they decrease with strength as we get deeper and move further down the slope. Ideally we would like to have the whole house up on the terrace but that's not possible. 21', I didn't come up with that distance but that is a distance we can work with.

Burton: All the information given to you has been updated.

Machelor: Can someone come forward and talk about this?

Burton: This is the new location of the house at 21' from the property line. This is the terraced area that we are talking about. The more we can have the house up here the better. We started looking at how far back we came. These are the soils that we're suspect on where we're going to have to go with deep helical piles if we enter the construction in to that area. What we did it is we kept that to an area where.....we can use shallow foundations here as far as we know. This is the distance between the changes in soil from where the unfavorable soils to the favorable.

Machelor: What is that dimension?

Burton: 16'.

Machelor: Before you were here and most of it had been on the terraced.

Burton: What we can do is some of the soils that we've used for excavation for the shallow foundations we can start to use this fill. Obviously the farther back we move it the more fill we've got to bring in. This adds to the increased finances of the construction.

Machelor: Are you comfortable with the stability?

Burton: Yes.

Ed. Yes.

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Burton: Ed and his company have done quite a bit of work up and down the gorge both in shoring existing cliffs and drainage control. That is one thing that Ed brought up a lot of the erosion and problems are caused from improperly worked drainage. With this construction that's all addressed where the drainage flows properly and it's not going to erode the land around it.

Machelor: Other questions? It's twice the amount you asked for before so that's good. You moved it back quite a bit.

Burton: That was the purpose why they wanted to go back and take a look. It did add some expense to the construction but we're staying within the budget where we need to.

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

Adam Bowman: I have a letter from the north neighbors in support if you guys would like to look at it.

Parisi: I would take it and put it in the folder as evidence. I would take it.

Conti: Ryan, without this person being here and I totally trust you but without this person being here how do I know who wrote this letter?

Parisi: I agree with you. You can certainly factor that in to how much weight you would use in your decision. It is information being presented by an applicant. You take it for what it's worth but it should be considered part of the record.

Machelor: We asked if there was anybody here that would like to speak on this aside from the principles and not hearing any we will close the public hearing portion.

**A motion to approve the variance whereas the Zoning Board of Appeals finds that pursuant to the prior discussions that the benefits to the applicant outweighs the detriment to health, safety and welfare of the community to include the dated paperwork of October 1, 2018, to be 21' from the front and 10' from the side was made by Conti, seconded by Balassone and carried.**

**Heuck Nay, Conti Aye, Machelor Aye, Baker Aye, Balassone Aye**

The next meeting will be November 8, 2018, at 6:30 P.M.

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

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Respectfully submitted,

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Sandra L. VanUden  
Zoning Board Secretary

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Norman Machelor  
Acting Chairman