

**ZONING BOARD OF APPEALS**  
**Town of Lewiston 1375 Ridge Road**  
**Lewiston, New York 14092**  
**Thursday – October 12, 2023**

**Agenda: LMK Realty Ridge Road Tabled June, July, August and September- remove (A),  
Evangel Christians in Spirit of Apostles Buffalo Street table in September- Table- (B), CP  
Modern LLC Model City Road (C), Charles Herman Lower River Road (D)  
Bonnie Spencer Moore Road (E)**

**Present: Conti, Heuck, Machelor, Maggard, Warnick**

**Presiding: Norman Machelor, Chairman**

**Pledge of Allegiance**

**A motion to approve the minutes of September 14, 2023, 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 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. I am going to open the public meeting we are going to make a motion to remove  
LMK Realty who was tabled in June, July, August and September by the applicant's request. I  
would like a motion to remove them.**

**Heuck: Remove**

**Machelor: Second?**

**Warnick: Second**

**Machelor: Motion made in the seconded to do what the applicant asked which is to remove  
from the table.**

**Serianni: And deny it**

**Machelor: Deny the request for variance.**

**Heuck: As written.**

**Machelor: Ok any discussion?**

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**Conti:** Just based on the withdrawal issue by the applicant to deny the variance as presented.

**Machelor:** Ok. I will call the question all those in favor say AYE

**Members:** AYE

**Machelor:** Opposed. Thank you! We have something on the table from the Spirit of Apostles Buffalo Street SBL 113.08-2-43 which was tabled in September. The applicant is asked that he be tabled again today and moved to the November meeting. **So, I need a motion to table.**

**Conti:** Motion to table

**Heuck:** Second

**Machelor:** All in favor say AYE

**Members:** AYE

**Machelor:** And close that public meeting.

**Serianni:** Norm the public hearing would remain open

**Machelor:** Oh ok. Oh yeah that's right I am sorry. Ok the next one is variance request CP Modern NY LLC 4746 Model City Road SBL 102.02-2-1 is someone here to present this? Come to the microphone.

Hi my name is Allen Davis I am the vice president for the operations for Modern and were here to talk about a potential solar project on a brown field site off of Model City Road. This solar developer that we are partnering with Citrine is the proposed person and company that is going to do the project and Marc is a representative of their company and Cela is here. Unfortunately, she got stuck in an airport for 5 hours and couldn't make it so she's here remotely and I know she feels bad that she couldn't be here and tried really hard to get here but... I am going to turn it over to them to present to you the application that they submitted and go over the project.

**Machelor:** Thank you!

**Marc Kenward:** Cela this is Marc did you want to say a few words to the board?

**Cela Sinay- Bernie:** Yeah. Yeah, thank you! As Allen said I apologize I couldn't be there in person hopefully I will get to meet everybody in person soon. My name is Cela Bernie I am the

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principal for Citrine Power. We are the parent company for the applicant. As Allen mentioned we are hoping in collaboration with the Town of Lewiston to build a solar system on the closed landfill behind the Modern headquarters on the address you have in front of you. In order to optimize the project on this closed landfill which is the best use frankly to do a solar system on top of it. We are here to ask for variances and get your point of view. Our company has built and likes to build very much on closed municipal landfills or private landfills super fun we have done this multiple times before. New York State as you know and multiple states throughout the northeast support this use of land vs productive land. So, I will stop there and um... we can move forward.

Machelor: Thank you!

Kenward: Thank you Cela. My name is Marc Kenward I am with Erdan Anthony consultant engineers we were retained by Citrine Power to assist them in this zoning variance application. As she mentioned the site is on a closed landfill on the board here, I have site plan that we developed from GIS data sources. To get you orientated Ridge Road... Ridge Road is here this is Townhall this is Model City Road and the landfill is tucked back here behind or to the north of the house's residents along Ridge Road. This is the old Hojack railroad right away that's not part of the project but it provides some buffer. They have a draft on top of the closed landfill. This is what we based the zoning variances on sketch layout if you will. Let me go through the variances we are looking for. In the application here I will go through the list setbacks abutting property lines. 3 different property lines the west line here we are looking for a 50-foot variance as well as a 50-foot variance to the north here. This north property is owned by affiliate company of the closed landfill the closed landfill is actually owned by a Washuta Family Trust that's so it can be maintained perpetuity. So, we are looking for a 50-foot variance to the north 50-foot variance to the west the property setback. We're looking for a 35-foot variance to the Hojack property that the old Hojack railroad which Modern also owns again a affiliate company of the Washuta Family trust. This railroad right away is around 65 umm... 65-70 65-75 feet so in reality we are asking 50-foot variance 50 plus foot variance 35 plus 65 almost a 100-foot variance if you wanted to count it... residents along that side. The second variance we are looking for is set back 200-foot requirement in the code for a setback to a rural residential district now I think outlined in purple on here is part of the zoned industrial but this big strip swap of land here which is zoned rural residential is owned by Niagara Mohawk for electrical right away electric transmission right away there are 2 lines that run along that Quadro there. One of those lines a might be the line that this array would connect into. That's yet to be determined. So, we are looking the Town requires 200 feet we are asking for 50-foot variance but keep in mind this is all vacant undeveloped land. To the north here it is used at least for agriculture purposes. But this strip here is...

Conti: You're actually looking for a 150-foot variance.

Warnick: Yeah

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Conti: Not a 50-foot variance

Kenward: Right 150 foot

Conti: You're looking for 50 feet vs 200

Kenward: You're right

Warnick: And to back up

Conti: And the other one you are referring to your kind of misleading

Warnick: Right

Kenward: My apologies. We're looking for a 50-foot variance

Conti: No

Warnick: No 150

Conti: No 150-foot variance

Warnick: You're looking to add a 50-foot setback from 200

Kenward: We're looking for... 50-foot variance for the property line and then north and west and 35-foot variance...

Maggard: No

Conti: Well, no you're looking for a 65-foot variance and a 50-foot variance

Warnick: Right

Conti: And then you're looking for 400-foot variances

Warnick: Right

Conti: On number 3 setback to road, I mean that's. Ok so that's you're kind of misleading there.

Kenward: My apologies.

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**Conti:** And you're looking at a 500-foot variance for adjoining land. From 700 to 200

**Kenward:** Hang on a minute

**Maggard:** 240 for the other one

**Warnick:** Yeah, this one's 240

**Kenward:** that adjoining lot

**Conti:** Adjoining land adjoining lot same thing but that's 500-foot variance you're looking for there.

**Kenward:** Correct

**Conti:** Not a 200-foot variance so...

**Kenward:** That's correct we are looking for a 500-foot variance and then setback to dwelling setback to a dwelling on adjoining land is 500 foot.

**Conti:** It's from 500 to 260 that's 240-foot variance

**Warnick:** This is 200

**Serianni:** Line 4 is 500 feet

**Conti:** Line 4 is 500 feet

**Warnick:** Adjoining land is 500

**Kenward:** That structure on adjoining land is that 340

**Conti:** 240

**Maggard:** 240

**Bernie:** Marc, should we go through the rational a little bit.

**Kenward:** Would you like to go through the rational?

**Members:** Sure

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Kenward: Cela do you want to take that?

Bernie: Yeah sure. I will just try and keep it simple. To the north as Marc was saying it's still Modern landfills property, to the west it's Niagara Mohawks/ National Grid which is where we are going to interconnect. In reality the very narrow strip of land that you really can't do anything because of the transmission line. The transmission lines will have very strict easements on either side of the transmission lines where you really can't do anything other than passing underneath if you really wanted to with a road or kind of like a gravel road. But you really can't do anything over a transmission line it is very strictly protected by National Grid and any kind of transmission company. So, it is not really useful land other than what they have there. And we are just going to tap into one of their lines that they have. So, we think the North and the West are somewhat umm... even though zoned rural agriculture it really is industrial property more or less because there is nothing else you can do on the transmission lines on the north. The North side Modern's own property but I am talking about the West side. On the East side I think we already we are within the setbacks that are already in the Town's zoning law. I think the South part it's interesting umm...like Marc was saying we already have the a affiliated company that has the old railroad line typically it would have to be abutting property but we still kind of went and said you know what let's just not count that as maybe abutting property let's just go beyond that to the residents. There is a I guess a height difference there is a difference between all of these houses or all of these umm... residents are looking into the landfill from above. So, whether we actually stick with current variances or current setbacks let's just say if we stick with the current setbacks then did a tiny small solar system which is you know technically and economically not very feasible vs if we you know kind of went along with variances that we are asking for and built a larger system the view is the same view because of height difference. And there's a huge big buffer it kind of goes down dips down that we are not going to be cutting any trees or anything to that effect on that area. The buffer will stay as a buffer already. And given that we are not cutting any trees we're not taking any other agriculture land this the this is kind of the only use for this type of property there's nothing else you can do. There's a clay cap under above the landfill that's been there and settled for a long time. We can't puncture it so we can't really drill into it whether the solar system or anything else. But the solar systems can be put on ballast that's how we typically build these solar systems on closed landfills. So, you know there's a common consensus in our industry that this is a good use of what you call a brownfield property. Umm so I will leave it at that. If you have any questions we can answer.

Conti: What is the difference in the height? The height differences between the properties of the houses.

Warnick: The last page

Conti: I am sorry. The landfill is 30 feet higher?

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Hueck: Lower

Conti: Lower

Warnick: Actually, it's a little bit

Mort: It's lower on Joelle's property but higher on mine higher on Dom's it varies

Kenward: It varies a little bit but it's about 30 feet.

Members talking

Bernie: And then the good news is like we do this in a lot of Towns and as you know there's a lot of umm... not a lot but sometimes there's concerns are we going to see this from the road and then don't want that passing through our town when we can see this from the road. Really you can't see this from Ridge Road because of the height differences and there's a lot of houses in between and there some googles actually that we kept from google that have found there way to you. You really can't see anything from Model City Road because of all of the buildings it's really setback the buildings the Model City buildings and all of the activity that goes on there. There is a pretty good buffer.

Machelor: Well, I want to say this about all of it a lot of what I have heard so far is kind of things that we hear when somebody is planning a project and they go to the planning board. This is the Zoning Board of Appeals and here what we deal with is the zoning code period. We you know if it says it should be 500 feet, we allow variances minor variances certain circumstances for that but we don't allow 75 or 80% variances. The point is whether it's a good use for that land or not is not our we don't decide that either you're asking for 1,2,3,4 7 different variances every single one of them is beyond what we would normally approve. Depending whatever circumstances, they are. The fact that it's higher than the surrounding houses makes it even worse.

Conti: Lower

Machelor: Yeah, lower that they look down yeah.

Bernie: Why do you think it makes it worse?

Machelor: Well, no I misspoke it's the landfills lower. But I just wanted to get through that the part that what we have to decide on today is whether we are going allow a variance that is supposed to be 100 feet to 35 feet which is well over 50% we're supposed to do a 50% variance on the north line from 100 to 50 feet and again another 100 to 50 feet and it goes on and on with these variances are very substantial. And the other in parts of this are not within our per-view to decide whether that's good bad or indifferent whether the Hojack line is there whether

the Niagara Mohawk transmission thing is there. I mean those are incidental but they are not what we decide at zoning.

Bernie: We're not really asking for you to ... on the planning board related issues we understand how the zoning board and the planning board you know what they decide on but we appreciate the color that you gave. We're just trying to bring more umm... other... decision making in the event that it effects why we're asking what we're asking because we're are rationality is the north and west side whether we have 30% 40% 50% here's why we're asking what we're asking we thought maybe you might want to hear that.

Machelor: Well, it's interesting you know I can ask another question. If it were to be made in compliance that's not good enough for your use, is that right?

Bernie: It would be very difficult because as I said even though this is not in your per-view but it's kind of worth the discussion quickly if we were to build this project half its size front the ... perspective it wouldn't change anything because people would still be able to get down into the landfill. But we won't be able to build it that way economically because it's a little bit more expensive to build with all of the ballast and we also have to pay National Grid to upgrade the 3 phases in the surrounding industrial area which typically is a fantastic service to an industrial area in a Town because we are upgrading the system going into the substation out of our own pocket. But we won't be able to afford that if we were to umm... build a smaller system.

Conti: We've had dealings with other companies and looking at solar systems in the past umm...that we have actually turned down because they wanted similar variances that you have and they turn around and they made they doubled up certain things and made it smaller and it fit in within the towns regulations and they built it.

Bernie: Yep

Conti: So why can't you do the same thing here? If you want to build it stay within the Town regulations a big one is going from 700 feet setback to dwelling adjoining land to 200. That's a 500-foot variance that's a humongous amount of variance.

Bernie: The reason why we can't do that is because building on a landfill is extremely expensive and we can't afford to carry the economies of scale on a smaller system.

Conti: But they. But they these other places built a system that ended up being larger than what they originally wanted just not spread out it was more compact and they made it within variances within the zoning code. And they ended up building it and actually more kilo-watt hours in a smaller system.

Machelor: Yeah, we don't design those they brought that to us you see. They... we said you can't do it the way you asked can you do it better? They said let's see and they came back with



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better and we said ok. That's... We don't get into the money you remember we can't decide whether your use of money is appropriate or how much this cost or that cost. Sometime we asked how many kilo-watts you're going to produce there and why do you feel that necessary but for now their problem is you don't... we have to justify these decisions to people who come here in the future. Or people who came here in the past and said you won't let me do that. So why are you going to let them do it?

Conti: And everyone, everyone is different we understand that too. But we are also here to protect the zoning codes of the Town.

Bernie: Right, we appreciate and we respect your decision-making process. That's why we are kind of trying to give you some of the filler about why we're asking what we're asking. Every case is different and we have to differ and respectfully in our point of view that if you give us what we're asking here because it's within an industrial zone and surround by properties that owned by the same landlord and it's a landfill specifically. I don't know if you have actually gone through in the Town a solar system on a landfill our understanding is the majority of them on farmland. So, farmland is a lot easier to tweak because they are going to be pouring into the ground and we do this all the time. There's towns in other states landfill is very difficult to manipulate because there is some sloping and ...we cannot touch it we have to be extremely careful about not to puncture anything and not to lose the integrity of the cap on the closed landfill. So, it is what it is there's not much we can do. We already packed everything we could pack into a small area. We're using the largest possible panel that we are using. And we can't really make them any closer to each other because there will be inter row shading umm... it is what it is this is the best we can do umm...anything we would have to do would have to be smaller which is not going to be feasible for this specific project.

Machelor: Ok thank you, thank you. I would like to ask this is a public hearing so I would like to ask if there is anyone else in the audience who would like to address this issue.

Conti: Just please come up to the microphone state your name and address.

Audience member I can talk loud enough

Conti: No, it's got to be on the record.

Machelor: No, it's for the record. It goes to the record.

Hi Michel Mort 1345 Ridge Road Who would this be benefiting the most?

Bernie: Thank you! This would be a community solar project.

Mort: I understand that but what percentage who would be getting what percent?

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**Bernie:** It would be distributed into households hundreds of households.

**Mort:** What's the name of the company again?

**Kenward:** Citrine is the...

**Bernie:** We own and operate were the independent power producers we own and operate the project. We don't take the power we sell the power.

**Mort:** Ok there was another project on a brownfield on Lockport Road isn't that the same thing within the same situation building on a landfill but it's another landfill. I understand how building on farm set is easy because you can penetrate the soil. But nobody sees it the one on Lockport Road you know what I am talking about Lockport Road and...

**Heuck:** Oh yeah

**Conti:** Right by the thruway there

**Mort:** I watched that one being made. When you see it that farm is enormous but I don't have to look at it every day. I am 35 feet higher than this I would be looking at it every single day. Is there a way to obscure it somehow?

**Bernie:** We could try do you have...I am just going to go off a limb here would you allow us to up more trees on your property? Because the thing is if I put trees on this one you still won't... you're still going to see it because of the elevation difference.

**Mort:** Obviously has anyone actually been to the site? Anybody

**Bernie:** Oh yeah

**Kenward:** Yeah

**Mort:** You walked the ridge?

**Kenward:** I am familiar with the ridge.

**Bernie:** We tried to walk the ridge but we can't trespass your property we couldn't go into each property

**Mort:** My property ends at the railroad. But the...the...at the base of the railroad there's an incline for the Burrum where they capped off the landfill.

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Bernie: Yeah, that's right

Mort: You could plant Cruella trees that grow tall won't affect the light. And Cruella's juniper I forgot the Latin name species they would be green all year round.

Bernie: Yeah, we welcome the opportunity I think we put a lot of screening around our solar systems all the time for this exact same reason. We just have to be careful to make sure we are not puncturing the cap when we are planting the trees. But if it's outside the cap yes, we are definitely open to the idea about putting a lot more trees.

Mort: It would have to be below the Burrum

Serianni: Let me jump in here.

Conti: Go a head

Serianni: Let me jump in real quick. A lot of these questions of screening would be presented before the Planning Board assuming that these variances here were approved. And the reason why this project was first brought to the Zoning Board is because in order for the applicant to even start the planning of their process they would need approval of these variances specifically. So, the questions of screening... there... it is relevant in the since there is a question whether this can be achieved by other feasible mean but I would say that it's more perinate of a question for the Planning Board.

Machelor: A lot of these things are more appropriate for the Planning Board as you know. All of these litigating factors are those kinds of factors. We are dealing with the code we have to make a decision about what the code says.

Mort: And another thing I would like to bring up I was notified of this yesterday. She was notified Friday. George was not notified Dom was not notified my neighbor Renee who was out of town

George: I picked up the envelop out of the mailbox yesterday.

Mort: 24-hour notice half heavily approached and the design plans are dated 9/26 why weren't we notified on 9/27

Machelor: I don't know

Conti: Don't answer that

Machelor: Don't know how to answer that we will have to find out but

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Serianni: The public hearing notice is properly published in the paper timely.

Conti: The letters went out last Thursday.

Mort: I know mine was postdated October 5 but I got it yesterday. So, I guess we are blaming USPS.

Machelor: Yeah, I suppose.

Wisnieski: They did go in the mail on Thursday.

Machelor: Anything further sir?

Mort: No, I just wanted to bring that up about the height difference and...

Machelor: So, the public meeting hearing is still open. Anyone else want to address this?

Bernie: Sir I apologize if you could the gentleman we just spoke with if you could just leave his contact information in the event that we move forward we would love to get his input. We are going to have everybody's input but if we were to go to the Planning Board like you said.

Conti: Ok. Please state your name and where you live.

George Franklin Cutis I live at 1335 Ridge Road. I'd like to state that Mr. Heuck and Mr. Warnick I did not expect to see shorts being worn here. I except that if I go to another meeting, you will be wearing a... respects everybody in this audience. It's not that casual that we just throw anything on I could come here in underwear too you know.

Machelor: Sir is that what you have to say?

Curtis: No, I have a lot more to say.

Machelor: Why don't you start with what is relevant to here.

Curtis: I think that you as leading this group outta at least have a say in that.

Machelor: Well, I do have a say. But you don't.

Curtis: That's what I am saying have a say.

Machelor: Well ok.

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**Curtis:** First of all, I would like to point out that my dad was a Canadian. Steve Washuta came over here was Canadian and my uncle Don Landers use to lend him equipment in order to operate. Over the years there we both Kiwana's and actively worked in things year upon years Steve hauled in fill for the roads adjacent to us in a stream in order to make it level and usable. And I just want to point out that it's affecting me I am a disabled veteran I have Asian orange and I probably won't be around as long as my dad was until 92. But I am hoping I will make it a few more years.

**Machelor:** Good.

**Curtis:** I want to point out too that you're creating a power system that I produced at Union Carbi Uranium yellow cake for summers while I worked there. And vast greater numbers I worked in the Lewiston basin fluid pack pump which was part of Armco steel. That pumped out hard holes to drill and to produce from. There's a lot energy that's come out of western New York there might be a little thing you heard of the power project. We in western New York had to deal with them stopping Uclin stopping us for years. We all had the dust we choked on and everything else. We don't need another power system here.

**Machelor:** Ok

**Curtis:** We need to move on to things...

**Machelor:** Alright

**Curtis:** I am not done yet. I am not done yet. My point being here is that you don't have the right to stomp on me. I am trying to get by the best I can. Believe me it's hard some days. But am just saying is that you don't have the right to stomp on me you don't have the right to stomp on these people either.

**Machelor:** We are not intending to stomp on anybody.

**Curtis:** Well, if you do pass this you've stomped on us.

**Machelor:** Ok. Thank you!

**Curtis:** Were a few people we don't we couldn't fill this whole place if we tried to. But it does beg some disagreement because my father went to Steve Washuta, he said that driveway down there is closed forever and that thing is sealed. This is his word my dad came out and built next to the landmark that he owns right next door to me. And that's how Model City came about.

**Machelor:** OK

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**Curtis:** And we all know this history of that gentleman that made it out there in that century past. We have the right to exist out here.

**Machelor:** Alright. Thank you!

**Curtis:** Oh, you want me to sit down obviously.

**Machelor:** I do. I do. You know I would like you to address the issues that a before us.

**Curtis:** I have an air traffic control license that I got in the service. And they're flying those helicopters down that damn powerline right. Right. If your system has reflective ability, you could blind those pilots. I am not saying you will but you could.

**Conti:** You do realize that we are the Zoning Board, we're not building this we are only here to protect the zoning code let me finish you had your change to talk. Let me finish we are here to protect the zoning codes as you heard us talk about earlier. You come in and kind of attack us for really no reason.

**Curtis:** If you think it's an attack, what do you think it is to me?

**Conti:** Well but we didn't put it out there. Modern and the companies here are looking to build it. We're here to make sure we protect the zoning codes so what I am trying to say to you is that don't we're not the ones are doing this we there to try to protect the zoning codes and gets what's best for the whole area. Including you guys. So zoning board is on the side of the people of the Town of Lewiston.

**Curtis:** The theory of what you're putting together has...

**Machelor:** Were not putting anything together.

**Warnick:** Were looking at the setbacks

**Machelor:** Were only ruling on zoning. Right. The lawyer has said it we've said it several times.

**Maggard:** We are looking at the number of feet.

**Machelor:** Is that enough?

**Curtis:** I will see what you do in the future.

**Machelor:** Ok. Ok good. It will still be about the zoning no matter what happens in the future. It will all be about the zoning.

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**Curtis:** I have air control license and I know about helicopters because I served with them 3 years in the military.

**Machelor:** Ok

**Maggard:** God bless you!

**Curtis:** And the reflector out there is enough to throw a pilot off at a critical point when they are inspecting those line.

**Machelor:** Thank you!

**Curtis:** You know you take it on your hit.

**Machelor:** Thank you! Public hearing is still open anyone else would like to speak of this? Dom?

**My name is Domonic Balassone I live at 1315 Ridge Road. Umm...I know obviously with zoning is engaging with what you have to do. I understand that. But these people who to come to or anybody who's looking to make these start these projects in our town. Niagara County is a big county to me ok I would think that if I was one to wanted to make a project like this, I would look for the area that was least invasive to the residents. I heard a comment saying that those driving down Model City or Ridge Road wouldn't even see that. I am not too concerned about the drivers I am concerned me and my backyard. I have a beautiful view that I don't want to see messed up. Ok. In this county I am sure there are all kinds of waste lands all over the place. I travel Porter Center Road heading north from Ridge Road you come across that humongous landfill ok. I mean to me I think they picked a great spot for it I am sure there are some residents around in my travels in that area I don't see too many residents. There's military property in that area too. So, there's not a lot residents there you would think that those who want to get into these projects would be looking for those types of properties. Where they can kind of spread out not bother anybody. I just don't know why it always seems that they pick where's its going to be of course we are only a few residents maybe that doesn't count.**

**Conti:** It still counts

**Balassone:** I don't know that I hope you're right.

**Machelor:** You've sat on this board you understand what we do.

**Heuck:** you sat with all of us.

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Balassone: The one on Lockport Road as far as seeing it you can see it from Lockport Road you can see it from I 190.

Conti: Yep

Balassone: So that's not hidden at all even though that's not a big residential area either.

Conti: Right

Balassone: You see it. I just think it would be easier for them and for you guys to make that decision. You wouldn't have to make that decision go find a place that's remote and ... want to go. And another thing is we pushed this green new deal in this county is that we are going to save the friggin planet that is not going to happen. I would love to see it. It ain't going to happen. There are more countries on this planet more that don't give a rat's ass about this god damn green deal. Their mining coal their building coal furnaces for plants it's just sickening time here people talk about how much we are going to save the planet. We're not going... whatever we do and God bless us that we do it and I am for it but it's minuscule compared to the planet.

Machelor: Yes sir, thank you! I'd like to take the opportunity to point out one of these things because your residents. The reason that these zoning codes are here is to keep a project 700 feet away from your property. 700 feet is a long way. 500 feet a long way. That's why there in here. So, when somebody comes and says well it's supposed to be 700 feet but, but, but, but we are asking for 50 feet or even 100 feet. And say you know maybe that's ok but we can't do it from 50% or more against the code. We answer to the public in more ways than you can think of because the decisions we make here could be challenged in court. We could make a decision to allow all this and a citizens group could go to court and say; You guys didn't follow the code at all you didn't do anything you use to do you made a separate deal for this and how do you explain that? So, you know it isn't as if we made up these rules today or last week these things have been in here forever and every once in a while, the Town has a meeting among themselves and increases or decreases the size of these zoning codes. In order to protect you. That's what it's all about. So...

Conti: And the zoning for solar projects was just put in how long-ago Anthony? Approximately a year or two ago.

Serianni: 2-3 years ago, I think...

Conti: So, it's relatively new so that's another reason why we stay pretty tight to what the zoning codes come up they just did this recently. It's not like it's an old code from 30 years ago that's really not adaptive to today's society for whatever. This has only been a couple years old.



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Machelor: Ok are there any more public comments?

Conti: Somebody saying something

Warnick: Yes her

Conti: Oh ok. I forgot about her on the computer.

Heuck: She's a ventriloquist

Conti: I am sorry did you want to say something ma'am?

Bernie: Yes, I was just going to ask something quickly if I may but if there's other comments from the public, we can my question could wait.

Serianni: There are no other comments.

Bernie: Ok we very much appreciate everything that you said, of course it's zoning board of course its zoning law that's why we are here to actually discuss and it's a give and take and were kind of trying to explain our case to you. And you are the decision makers we want everything we respect and very much appreciate the position that you are in. I had a quick question about the 50% cut off what is driving that? If we were to make the case to you but on the north and west for example.

Machelor: She want to know why 50% is...

Conti: No one actually said 50% we went... you're talking about why we won't go above 50% of... nobody actually said that were looking at each individual one but we're saying that these are quite substantial.

Bernie: Yes

Conti: Umm I think we were kind of throwing numbers as far as what you're looking at 50 to 100 is 50%.

Machelor: 50% is a substantial number of anything.

Conti: Nobodies saying that we strictly stop at 50%

Bernie: Got it. Got it. Ok it was just a verification question that we just wanted to understand. And that's kind of why we want to give were not really coming to disrespect the

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zoning laws here were kind of trying to make the case and trying to explain why we're asking what we're asking it's that simple.

Conti: Thank you!

Machelor: Ok thank you! if there are any more public comments? If not, I will close the public hearing. Does the Board have any questions and further questions?

Serianni: I just ask that the Board make findings on all the criteria and apply the balancing test prior to making a motion.

Machelor: The area variance criteria.

Conti: But for each one of these. We can put it off and make our decision within 60 days.

Machelor: Umm can we recess and speak to you Anthony?

Serianni: Sure brief

Machelor: Can we go into private session executive session?

Serianni: Is it a legal question?

Conti: I guess the question is that we want... we closed the public hearing as far as putting a motion we want to reserve the right to put the motion out within 30 days.

Serianni: Yeah, you can reserve decision an issue the decision within the next you have a max of I believe it's 60 days after closing the public hearing. Ok

Machelor: That's what we want to do

Serianni: Yeah, no need to recess for that.

Machelor: Alright

Conti: Ok. So, I will make a motion to...

Serianni: Reserve decision

Conti: Reserve decision within the next 60 days

Serianni: And make a decision within the next 60 days

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**Conti: And make a decision within the next 60 days**

**Machelor: Ok do we have second**

**Maggard- Second**

**Machelor: Ok does everyone understand the motion? Lisa read it to us.**

**Conti: Everything is taped.**

**Machelor: oh alright**

**Conti: Everything is taped all of our stuff is taped.**

**Machelor: Ok the motion is to withhold our decision for 60 days while we study this and we have a second further discussion all those in favor say AYE**

**Members: AYE**

**Machelor: Opposed? Lisa poll the board**

**Wisnieski: Joseph Conti: AYE, Gary Heuck: AYE, Norman Machelor: AYE, Marjorie Maggard: AYE, David Warnick: AYE**

**Machelor: Ok so that's the decision everyone understand what it is?**

**Conti: Yes Domonic**

**Balassone: When you make your decision how do we find out?**

**Serianni: The decision will be made at presumably the next zoning board meeting which would be next month.**

**Conti: It will be back at the Town hall but yes. The 2<sup>nd</sup> Thursday yeah, we have 60 days but it will be out it should be out by the 30 days.**

**Balassone: The 2<sup>nd</sup> Thursday**

**Conti: 2<sup>nd</sup> Thursday of the month.**

**Balassone: 6:00 or 6:30 I thought something might change?**

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**Machelor:** We are intending to change it to 6 so you will be notified that way November 9<sup>th</sup>.  
Alright thank you!

**Bernie:** Thank you very much for that would you like us to provide any other information along the way?

**Conti:** I don't think so.

**Machelor:** I don't think so.

**Conti:** I think we are good at this point.

**Bernie:** Ok thank you for letting us speak.

**Heuck:** Thank you!

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Machelor: Alright I would like to open the public meeting for Charles Herman 4171 Lower River Road Lewiston request a variance for use of a 12x28 shelter/ pavilion to store a boat and firewood. Mr. Herman ok tell us what you want to do.

My name is Cheryl Herman I reside at 353 Brentwood Drive in Youngstown I will be speaking on behalf of the 2 of us. I have some packets here for everyone with some information.

Conti: Do you happen to know what they already us.

Herman: I was gathering my notes and I don't know about you guys but I am a very visual learner so I need to see things so in case you guys are too I wanted to make sure you had everything in your hands. Let me just start by saying I am just a school teacher and I was not familiar on these zoning codes and regulations at all. But I have to say over this past week I really tried to educate myself so we come to you today with an educated perspective on...

Conti: Could you hold on one second. Excuse me we have a meeting going on here so please if we could keep the conversation out to the hallway. Thank you!

Herman: And I have to say I commend each and every one of you serving on this board because there are a lot of codes out there and they can be very confusing. So, what we are really here for today to ask you is that the board will reinterpret the current classification of the existing structure on the property. As of now the existing structure which is a big old barn was classified as an accessory use structure. Now after reviewing all of the Town's zoning codes and definitions it's clear to us that the existing building is a principal structure and that the storage shelter that was built meets all applicable requirements as an accessory structure. The building was a principal structure when it was purchased it was a religious facility and we have done nothing to change that but in fact have made numerous improvements to the building. It's currently used for multiple purposes including a building for sleeping, dwelling private gatherings, a woodshop and also storage for our lawn equipment. I would like to begin but giving a little history on the purchase of the property itself just to give you some insight on where we were coming from. Charlie's parents Dennis and Linda Herman bought the property back in August of 2010 from the Lamb of God Christian Community. At that time the current building was being used as a place of worship. Dennis and Linda purchased the property with the intent of making improvements to the building to use it for temporary dwelling in the summer months and use the property for recreational purposes for our family. And that's noted in exhibit A which is the original contract that they signed. After owning the property for a couple years, they realized it was going way too much for them being that they are an older couple in their 70's. So, in November 2013 they generously gifted the property to myself and Charlie. We were very excited to receive it and immediately began making improvements to the building and cleaning up the property. Since the building had been used as a church in the past, we were under the assumption that we could continue to use it for private gathering or

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sleeping or whatever we needed to. It was a principal structure and we wanted to continue to use it as such. Dennis his father has also written a letter to the board which Charlie was going to read to you after. Over the past 12 years we have poured our heart and soul sorry I am getting emotional excuse me. We have poured our heart and soul into this property and have completed major improvements to both the interior and exterior. The property looked like a junk yard when we got it. It was disgusting but we feel now that it is beautiful piece of property that adds character and charm to the neighborhood. Since we began the work no one from the Town ever questioned what we were doing at the property. It's been 12 years of work we have has numerous private gatherings over there as well. Again, no one has ever said we cannot do it. If we had known when we got this building that we could only use it for storage we never would have spent the countless hours we have fixing it. Some of the improvements we have made include: removed all the junk that was in and around the property when I say it looked like a junk yard it looked like a junk yard, we fixed leaks in the roof, we replaced rotted wood on the side, we ripped out all of the interior insulation and lattice and replaced it with new insulation. We physically went in the dead of winter and tore down from a house Dr. Gillicks house in Youngstown that they were tearing down in the dead of winter the two of us tore all the siding off this house. We rid the building of animals and animal waste there were squirrels living everywhere in this facility there was waste everywhere there was hundreds of walnuts and the two of us cleaned it all up ourselves. We replaced broken windows we installed blinds, we replaced light fixtures, we put a brand-new stone wall behind the woodburning stove that was in there that we hand collected from Lake Ontario and we fixed the chimney to properly heat the building so we could use it in the colder months. We installed a rainwater collection system so we could have water readily available. We brought in furniture for it we brought in a fridge, microwave other things so we can cook and have food storage in there. We even purchased a porta potty from Modern to use as a bathroom facility. We even painted it so it would blend in with the property as you can see in exhibit C. We have it cleaned regularly so it's always fresh. My husband Charlie has done cleared the property for a good 2-300 feet by hand by himself of hedges and trees and bushes just so that we can eventually make our way to the back of the property. We have included a lot of pictures of the property just to give you an idea of what it looks like as you can find in exhibits D-F. And if you look G-K they really demonstrate that this building is not an accessory structure. This building has become our second home and we don't understand why all of a sudden, they changed it from a principal structure to what it was when we bought it to an accessory structure. To say that we a devastated to no longer being able to use this property as a building for recreational use and private gatherings is a huge understatement. We have literally made ourselves sick over this. Can not even begin to put a cost on the amount of time and energy we have devoted. The 2-story building is built on a permanent concrete foundation it has 4 walls a roof and covers about 1600 square feet. It's insulated, it has heat, it has electricity, it has a rainwater collection system and a temporary bathroom facility. We do not understand how this building cannot be considered a principal structure. According to the Town of Lewiston zoning code a building is defined as a structure designed, used, or intended to be used as a shelter for humans that is

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exactly what it is. It's a principal use it's the primary function of the site of the building. That is the principal use of the building to us. A principal building is defined as a structure in which is conducted the principal use of the site on which it is situated on and that's what it is. Based on these definitions we contend that the existing structure on the property is the principal use structure. It's a large and prominent structure on the property it's been used for a variety of purposes over the years but not limited a sleeping place for us, a location for private gatherings for family and friends, hunting in the back, to store yard maintenance equipment not being used for sleeping/ gatherings. The property was purchased with the intent of making improvements to it so we could use it for our own personal use. As far as the storage shelter that we had build be humbly apologize for building it without a permit. We were unaware that the project required one but after doing my research we fully understand that we need a permit for it. We spent almost 11,000 dollars on having this beautiful structure built to store our boat in the winter months. And we only decided to spend this much because we wanted something that matched versa of the building and really blended in with the property. We wanted it to look nice for everyone to view and to add value to our property. We even began adding sidewall ourselves out of old pallets just to protect the boat from the elements. Theres some pictures in there of both the pavilion and where it's located on the thing as well as the receipt of what it cost us. We have been storing or boat in the winter at Lewiston Storage at a cost of over \$500 annually we also pay to have the property fully insured and it's insured as a dwelling as the insurance company considered it a dwelling which is a principal structure at a rate of \$335 annually and we pay almost \$2000 a year in property and school taxes. This shelter meets all requirements as an accessory structure was build to serve as storage for our boat as indicated in the email to the builder it was not ment to be a stage as some people have indicated. And the newly built structure is much smaller than the other one and it's clearly subordinate to the principal structure.

Conti: Can I go back on just one quick thing

Herman: Yes please

Conti: You said it's not supposed to be a stage. Yet the Barnaroo 2023 says old school jam session on new stage

Herman: That was just a play on words we have I know it is definitely not a stage

Conti: But and you look at the one picture in this here and it looks like a staged area with lights and instruments and stuff so...that looks like a stage.

Herman: Ok well it's definitely not a stage the email can even verify we needed a 10-foot clearance because we need to park our boat under it which is why we had it built. And in response to the violations, you are coming to the property never has been and never will be our

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intention to use the property for concerts or a campground. The property has never been used for public events it is only private gatherings. We do not host any public events on the premises and we do not have concerts. We have close friends who are local musicians who play at our private parties for free other people in Lewiston have parties with bands all the time and we do not understand why we should be penalized. The party listed in the complaint is held only once a year in the summer and it started as a birthday celebration for myself and my husband. We have hosted it there since 2015 without an issue and prior we hosted it at our other residence in the Village of Lewiston and again there never had an issue with it. It is a completely private event. As you can see by my Facebook invite which they screenshotted the ad but if you look at it's a private invite it is only by invitation it is not open to the public at all. The music is always stopped by 11pm in accordance to the noise ordinance and the guests are either moved to the way back area or they go into the facility. Law enforcement was not called to the party as you can see from the police blotter that I printed out of all the activity that occurred that night and normally when people have complaints about noise, they call law enforcement. And we are not using it for a camp ground the camper that was on site is our own personal camper there's a picture of it in the ads and according to the zoning regulations we are allowed to store up to two recreational vehicles on any lot in a residential district. And as far as the other violations since we consider this a principal use structure the pavilion that was built as accessory use to the principal use structure. There's only one principal use structure on the lot and there's only one accessory used on the lot. As far as the last violation about the permit we fully understand that we did not get the permit we are more than happy to supply any paperwork any needed documentation and paying you fees or fines that we need to in order to get the permit. So again, we are willing to comply with whatever it takes to reclassify this building as a principal structure because to us that's what it is. If you require any additional information, we are more than happy to provide it. Thank you for your time!

Machelor: Ok pretty complicated. It seems to me that when you started with this first of all you have decided that it's a principal use. Right?

Herman: Yes, after reading of codes that's the interpretation we got.

Machelor: Well, the Town doesn't agree with that the Town says it's not a principal use it's a barn. It's not for human habitation. So, when you start with all the other things the what you might call litigating facts and trust factors. If you say to me, it's never going to be public, what am I ok I guess so. I am not going to go down there and watch to see what you are up to. So that stuff. The reason why you are at the zoning board and not some other place is because what we're concerned with is what the zoning board what the zone says about building 2 buildings on the same property or without a permit.

Conti: With out a principal



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**Machelor:** Without a principal building. So, you know you brought this building nobody prevented you from doing all the things that you are doing. You Say why is the Town preventing me from doing this, this and this. Well because you put up another building and called attention to yourself. And the Town said wait a minute what's that building that's not supposed to be there. That didn't come before us to decide that. That's supposed to come first so it didn't come first so it didn't come first. Our take on this is that you decided on your own to do what you wanted to do and you did it right up to this point where you violated the zoning board codes zoning codes. That's what you did and you say you're willing to do anything to fix that. Well, I mean anything doesn't include taking down your building, does it?

**Herman:** I hope not.

**Machelor:** Well, I mean...

**Conti:** Well, it is considered a barn you can say it's a principal structure it's not the contract that you provided in section A says current use for improvements family dwelling is not checked with car garage not checked but what's checked is vacant land additional uses/improvement barn on property. That was the contract you provided us right now. It's a barn it's not a principal building. I am sorry.

**Ries:** May I speak for sec?

**Conti:** Are you with them?

**So,** I am their architect.

**Conti:** Ok come speak your name and address

**Richard Ries** I live at 520 Greenfield road in Lewiston. So, I tend to disagree a little bit with your evaluation of the property because it is zoned R1 so residential and it's also it fits clearly the definition for a primary structure.

**Conti:** I am going by the contract that she provided right here that stated in the contract that its vacant land with a barn on the property.

**Herman:** Why can't a barn be considered a principal structure? People build houses in barns all the time.

**Conti:** But it's not

**Maggard:** Are you going to live there?

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Herman: One day we hope too yes

Ries: But even if you look at that contract in comparison to what your code says. Your code clearly states that any dwelling unit would be the principal structure.

Conti: A dwelling unit has to have kitchen a bathroom bedroom.

Ries: It doesn't say that in your code.

Herman: Doesn't state that in the code.

Conti: It's implied.

Machelor: It says that elsewhere in the regulations.

Herman: I have a definition of the code it does not say anything about...

Machelor: Well, it isn't a house if it's a barn. And it's not made for humans it's made for animals and storage that's what barns do.

Herman: People fix up barns all the time.

Machelor: They do they certainly do.

Conti: For recreational purposes.

Herman: And so, you're saying that can't be a dwelling

Conti: Well on the next page you've got it and turning the property into

Herman: And to make improvements to the barn and the rest of it got cut off but as his dad said it's supposed to be temporary dwelling.

Conti: But that's...

Serianni: Can I read the definition of a dwelling.

Conti: Go ahead

Serianni: To the record here. The Lewiston town code definition of a dwelling is any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more

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persons erected on a permanent foundation. That is the definition that the Board has to interpret whether this structure is a dwelling.

Ries: I feel that that property does meet that.

Conti: Is does not meet that.

Ries: Why do you feel that way?

Conti: It's a permanent spot where they live at?

Ries: They could potentially live there

Conti: Potentially that's not we are not talking about potential were talking

Ries: They've slept there

Conti: No, no, no on a permanent

Maggard: You're storing a boat there

Herman: No, no, no

Conti: That's the other

Herman: That's the other

Machelor: That's the other structure

Ries: No, I don't believe it has a sink or anything like that

Conti: Doesn't have running water

Ries: They do have rain water

Conti: Is it running water? No bathroom.

Ries: Like I said none of that is listed in the code as a requirement.

Charles Herman: We do have a kitchen

Machelor: Well, you just heard the attorney say what the Town...

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Ries: It's just...

Machelor: What

Herman: It's just residents or sleeping place of one or more persons erected on a building foundation

Conti: Is there a shower in it?

Herman: It doesn't say that that's necessary in a dwelling unit. I have been to hunting camps and people's cabins that are dwelling units that have less than that. They don't have running water

Conti: But this is a rural residential property in the Town of Lewiston I don't really, I mean I understand what you are saying I get it but that's in the out in the middle of nowhere. The hunting camp down in the southern tier whatever.

Machelor: And it's probably zoned that way too.

Conti: I can't look at that vs what we're talking about here.

Machelor: Ok alright.

Ries: One more thing too if guys do consider this a primary structure, they have hired me to go through the existing... so I can go through it and make sure it's up to code provide as built drawings to the town and make sure they are stamped and sealed and get everything that they need to do to get a permit for accessory structure.

Heuck: I think you have to take it to the code enforcement

Machelor: That's not within our... What's that Gary

Heuck: Code enforcement.

Conti: That's with code enforcement.

Maggard: That would be the building department.

Ries: I am just saying that they retained an architect they are trying to take steps in the right direction to litigate the mistake that they made.

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**Machelor:** It's not a mistake in a sense the mistake was putting put a building without getting a permit. That was the primary mistake that's how we got here.

**Ries:** As they said they're not familiar with building process how were...

**Warnick:** That's

**Ries:** I guess they should have asked the question for sure.

**Machelor:** A lot of people come to this board and they have asked those question because they are going to invest their time and money and they want to make sure they are doing what they are supposed to be doing.

**Ries:** Understood

**Machelor:** The people that don't do that end up with a problem and that's why we are here.

**Ries:** Right

**Machelor:** Ok thank you is anyone else this is a open public hearing anyone else like to speak on this issue? Hearing none. Anthony

**Serianni:** So, we discussed the interpretation issue would you like to speak on the use variance question specifically the architect. So, there are two matters before the Board first the board needs to consider whether this is a dwelling unit compliant with R1. Second if the Board does not consider this structure to be a one family residential structure, then the Board needs to consider whether to grant a use variance to allow them to continue using this structure as is. Otherwise, they are not in compliance with the code. They are using the property not in compliance with the existing zoning. There are...with a use variance there is a very high burden that the applicants have to meet. It's unnecessary hardship that's the legal standard that you have to demonstrate to the board in order to grant this use variance and that's meet by 4 criteria I will read them to you guys and I think it would be helpful for the board to just at least hear their responses to these criteria. First and foremost, the applicant cannot realize a reasonable return on the investment. Second the hardship is unique and does not apply to a substantial portion of the residential zoning district. Three the proposed used will not alter the essential character of the neighborhood. And four that the alleged difficulty is not self-created. So those are the four criteria and you need to meet all of them.

**Ries:** And one other question to add to this so prior to the Herman's parents purchasing the property it was a place of worship would that have been considered a primary structure?

**Serianni:** That's compliant with R1

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**Ries: It would not have been**

**Conti: No**

**Serianni: No, it is. It is it is an allowable use under R1**

**Conti: To be used as a church but not as a primary residence. He's asking if it was zoned as a primary residence, it was not. It's not a principal structure.**

**Serianni: Principal structure is not applicable it would be a place of worship given that it was property owned by a church it likely would have qualified under a place of worship.**

**Ries: Then it would have been allowed to have an accessory structure.**

**Serianni: Correct**

**Conti: But that would have been back in 2010.**

**Ries: So, it lost its classification of a primary structure**

**Serianni: Correct**

**Conti: It wasn't a primary structure**

**Serianni: No**

**Conti: It was a house of worship that was not a primary structure.**

**Serianni: Correct**

**Conti: 2 different things**

**Ries: But so, if it a house of worship had the ability to have an accessory structure**

**Serianni: Yes**

**Machelor: Yeah**

**Ries: So why are you taking it away after the fact**

**Conti: It's not a church it's not a place of worship anymore**

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Ries: Right, I understand that but if it was a primary structure, they purchased it and now it's not a primary structure

Conti: It's not a primary structure

Serianni: So allowable uses in a residential zone it's single-family resident's places of worship. So, it qualified under a place of worship

Machelor: Not as a residence

Serianni: Not as a single-family residence that doesn't apply here anymore that place of worship use no longer applies if they had not altered the property, it would still be a permissible use deemed a non-conforming use basically grandfathered in but now that they have made substantial alterations to this property, they have lost that protection as a non-conforming use. So those alteration that they've made now has placed it out of conformance with the zoning code.

Ries: But the alterations were just repairs.

Conti: Not the structure that you built outside. Wasn't just...

Ries: That not what I am talking about what we're talking about the primary

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Serianni: Generally, I can pull up the definition but generally a non-conforming use a property loses a non-conforming use classification after 50% of the assessed value of the property has been put in or invested into the property.

Ries: Ok

Serianni: And it sounds to me like a substantial amount of work has been put into this. My I don't speak for the board but my legal opinion on this is that so much work has been put into this I see the photographs here and...

Ries: I don't know how you monetize their actual labor vs the actual money that they have spent on physical materials

Serianni: All that I am saying is that they lose that grandfather classification by making all of these repairs to the property.

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**Machelor:** He our attorney read these things to you but they need to be gone through a little more.

**Ries:** Ok

**Machelor:** So, one of the use variances is alleged hardship has not been self-created. When you buy a property with a barn on it and you decide to turn it into something else you've created the problem. You've said something that was not a principal structure and now you want to make it a principal structure and also go one step further not only is it a principal structure but it's allowed all of the things that a principal structures are allowed. So, it's like you know what they say that the poison fruit of the poison tree. You can't start out with a barn and turn it into a residence and then claim it's a residence and then as for variances based on it being a residence. We don't agree that it's a principal use to being with. It wasn't a principal use as a church.

**Ries:** So, what would it need to have to be considered a principal structure?

**Serianni:** It would need to be a single-family residential structure it would have to be a home.

**Ries:** So, if they added plumbing to it and water and bathroom.

**Serianni:** Yeah, you would have to

**Warnick:** A place to sleep

**Conti:** You would have to live there.

**Ries:** You could live there part time I mean use it as a vacation home you can

**Machelor:** Well yeah, I mean that's something to consider.

**Serianni:** It has to meet the building code as a single-family residence.

**Machelor:** It means the building inspector will be around and say this is what you got to do. You as an architect you can tell them what it would take.

**Ries:** No, I absolutely know what the building code says I am just trying to go by what the Town code says because this is just...

**Machelor:** I mean the point is if you together decide you're going to make it a single-family residence then you could come and say now it's a single-family residence and see what the building inspector says.



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Serianni: Well at that point they wouldn't need a variance.

Warnick: Right

Serianni: So, they wouldn't need to see us after that.

Machelor: Right, we would have to agree that it's a single- family residence.

Conti: Not...

Serianni: I mean if the code enforcement officer let's say hypothetically you make multiple alterations to it and you fix it up and you turn this barn into a single-family residence and it meets all code qualifies as a single-family residence. That decision would be made by code enforcement and the building inspector. Then that question doesn't come to here. When you come to the zoning board and you ask for an interpretation what that interpretation means is that the building inspector has an opinion that says you are not in compliance with xy and z. And we come to the zoning board of appeals to appeal that decision we are asking for an interpretation of the building inspectors' interpretation of what you presented to him. So, if you make alterations to the property that make it compliant as a one family residence and no longer as a barn you won't have to come us for anything because the if it qualifies as a single-family residence, it's you don't need a use variance. The issue is right now and I apologize for speaking on behalf of the board.

Conti: Go right a head

Serianni: The issue is that right now is that you don't have a single-family residence on the structure all you have is a barn with amideites on it and it may be a wonderful barn sounds like it is but you need in order to be compliant with the code you need a single-family residence. The reason why I say all that is because a use variance is like I said it's very hard

Conti: Extremely hard

Serianni: And the board has a standard that they need to meet and they don't like to set precedent on certain matters you know were going to allow a barn to qualified as a we are going to allow a barn to be a recreational area in a residential zone and then two years later somebody else comes in asks for the same thing now the board risks a lawsuit potentially by being arbitrary and compressiously if they vote that one down. So, it's a very difficult standard to meet.

Ries: And I understand that as well. I just in my personal opinion I think that this should be grandfathered in as a primary.

**ZBA- 10-2023 (D)**

**Conti: But it never been**

**Warnick: It was**

**Conti: It never was**

**Ries: Like I said at one point it was**

**Conti: No, it wasn't it was a house of worship.**

**Warnick: A house of worship**

**Ries: Right, which would be a primary**

**Conti: It's not a primary residence. It's a house of worship. It's a house of worship.**

**Ries: A primary structure**

**Machelor: It's a use permitted on**

**Conti: It's a house of worship that was permitted at that time.**

**Ries: I respectfully disagree but**

**Conti: It's right in the contract that it's a barn**

**Ries: I understand that it's barn**

**Conti: That's it right there coming from the Lamb of God Christian Community to Dennis Herman and Linda Herman.**

**Serianni: Just for your reference so these are the permitted uses in an R1 zone so these are separated out**

**Ries: Yep**

**Serianni: You understand that**

**Ries: I got you**

**Serianni: Ok**

**ZBA 10-2023 (D)**

Conti: We don't want to debate that over and over

Machelor: Ok anything further?

Ries: So yeah, I guess that they would like to see what they need to do to request a use variance or whatever they would need to bring it up to what you guys consider single-family residence.

Conti: Well, we can't.

Warnick: Yeah

Conti: to make it primary residence that's between you and the Town

Warnick: Building code

Conti: Building Department. So, at this point I think the first thing we need to do is vote on the motion as far as the interpretation.

Serianni: My suggestion would be that if that is... first of all we still have to address the public hearing I don't know if anyone from the public is here

Conti: Right yes right

Machelor: It's still on

Serianni: Next what I would suggest is I did hear from the applicant my suggestion would be for them to demonstrate I think the chairman did make mention of a particular high concern with the criteria on a use variance the self-created issue. But if the applicants would like to address that issue they can and then I would suggest that you go through the criteria and then make a decision after you have the opportunity to be heard.

Machelor: The first one the first thing on the use variance criteria say cannot realize a reasonable return substantial as shown by competent financial evidence. Those things don't apply to single-family residences in this particular case because you're not trying to get a reasonable return. You're trying to use it. So, the second thing is the hardship is unique and it does not apply to substantial portion or district or neighborhood. Well, the problem is that it isn't unique there are barns all over Niagara County that people do things with besides live in.

Herman: When I talked to Chris McAuliffe, he said it was a unique property there was only 5 properties like this in the Town of Lewiston.

**ZBA- 10-2023 (D)**

**Machelor:** Like What?

**Herman:** I am just saying that he did say it was a unique situation.

**Conti:** A use... 99.9 % of the use variances get turned down in New York State. It's not a Lewiston thing it's New York State now you can probably understand that. You're asking to change the actual use of the property. So, I think from everything that I am seeing we can sit here and go around and around and round once we make a determination on the interpretation at that point, I think it would be up to you to maybe make that into a primary residence by doing what's need from Tim Maters and the building department. To make it into a primary residence and then you don't need a use variance. Use variance I don't want to say you will never get it but it's

**Maggard:** Very difficult

**Conti:** It's extremely extremely difficult because where an area variance where you need a couple feet on one side whatever else we have leeway you don't have to hit all the criteria. On a use variance you have to hit ever the criteria one after another there's no getting around it. And the first one is almost impossible to get right off the bat and then the other ones fall right in order. So, I mean...

**Machelor:** If you just miss one the hardship has been self-created. It has and that's it. Right there.

**Conti:** I think once we vote and we determine on the interpretation if however, the board goes if it goes to the point where the we agree with say we agree with the building department I think at that point going forward to making it like you mentioned making it into a primary use residence. And making the changes necessary to bring it up to code for that is probably the way to go.

**Herman:** We have you probably don't decide that but would we be given time to do that?

**Conti:** We don't decide that

**Warnick:** You would have to talking to building...

**Heuck:** We don't make that decision

**Herman:** Then we would have to go and talk to the building Department.

**Ries:** So then would it make since to table you vote until we can have time to talk to the building department and see exactly what it would take?

**ZBA- 10-2023 (D)**

**Machelor:** I think we are going to issue a decision on the principal use thing today. We're going to do that.

**Warnick:** The variance

**Conti:** On the interpretation

**Machelor:** On the interpretation

**Conti:** Which is the first part of the variance.

**Machelor:** So, if you will

**Conti:** Well, I would like to make motion to uphold the building inspectors code interpretation.

**Warnick:** I second that

**Machelor:** Ok motion has been made in the second to uphold the building inspectors code interpretation. Made in second and further discussion? I will call the vote. All those in favor say AYE

**Members:** AYE

**Machelor:** Poll the Board please

**Wisnieski:** Joseph Conti: AYE, Gary Heuck: AYE, Norman Machelor: AYE, Marjorie Maggard: AYE, David Warnick: AYE

**Machelor:** Ok

**Conti:** So now it goes forward with use variance. Now that's up to you guys how you want to do that. Like I said it I know you don't have any of the information now.

**Machelor:** Can they withdrawal?

**Conti:** Can they withdrawal the use variance at this particular point?

**Serianni:** They can withdraw it you'd like to withdraw it.

**ZBA- 10-2023 (D)**

**Conti:** If they withdraw, they can come back to it right? With less than a year it's not like we turned them down. If we turn you down right now for the use variance you can't come back for a use variance for another year.

**Herman:** We would like to withdraw.

**Conti:** So, this way you can go to the town go meet with him and like you said make it into a principal dwelling and do what you need to do.

**Ries:** Ok

**Conti:** Add water a bathroom kitchen to whatever.

**Machelor:** So, would you like to withdrawal?

**Conti:** So, they are withdrawing the use variance

**Warnick:** Yep

**Machelor:** Ok. So, we don't have to do anything further I will close the public hearing

**Serianni:** Public hearing was closed the application is withdrawn there's no further action.

**Ries:** Thank you for your time

**Members** thank you

**ZBA-10-2023 (E)**

**Machelor:** Ok variance request Bonnie Spencer 2559 Moore Road SBL 76.00-2-45. State your name and address for the record.

Hi I am Bonnie Spencer 2559 Moore Road Ransomville, NY. This is my daughter Megan

Megan 2559 Moore Road too.

**Machelor:** Ok you request a variance.

**Conti:** Can you take it out please we got another one going on.

**Members:** Thank you

**Conti:** Nobody listens to me it's like being home.

**Machelor:** You need a gavel. I will bring mine. I broke it during the last session

**Conti:** Ok go ahead I am sorry state now.

**Machelor:** Ok you request a variance to allow for maintaining and raising chickens in your backyard. Section 360-187 Animals horses cattle hogs' fur-bearing animals or fowl shall only be harbored on a property that meets the farm definition a five-acre minimum is required. Property is zones RR rural residential. You don't have 5 acres you only have 1 acre. It's not a farm.

**Spencer:** Right

**Machelor:** Ok. The silliest argument is to get backyard chickens. You have been here for this whole meeting, right?

**Spencer:** Yes

**Machelor:** We have to say the same things all the time. First of all, you have to have 5 acres. So, you know it's right there. You lose the argument immediately right there it's not a farm. That's 2 strikes against you. So, it depends where you live you know that people in the Village of Lewiston have chickens.

**Spencer:** Yes

**Megan:** We were made aware of that.

**ZBA- 10-2023 (E)**

**Machelor:** But this isn't the Village and you know it's a big Town and there's a lot of Farming going on in this Town and what the Town decided to do was to keep the animals in the farms period. So, I don't see how we can change that in your case regardless of your reasons.

**Conti:** It's and 80% relief of the zoning code and that's what makes it hard.

**Spencer:** Yeah. We live in a very rural area and we do have abutting farm land but we don't own it obviously.

**Conti:** Right

**Megan:** That was another question do you have if you were to like lease land to make it so it was enough does it have to be abutting to your property or can it be like anywhere?

**Conti:** Well, that's where you would have to keep the chickens

**Warnick:** The chickens would stay there

**Megan:** They would have to reside on the 5 acres.

**Conti:** Right. You can't just rent property somewhere else

**Machelor:** If you wanted to talk to your neighbor the farmer and say can I put a chicken coop on your yard I will give you a dozen eggs every week I don't know.

**Spencer:** Well can I show you like I have picture of the abutting land behind my property that...

**Machelor:** That's not going to help your case ma'am.

**Conti:** It's not your property. The thing is that your property is at 1 acre not like he has mentioned if the abutting property is a farm and he's got over 5 acres and he's willing to allow you to put

**Warnick:** Chickens on it

**Conti:** Chicken coops there on his property could be right next to your but it's on his property which is 5 acres

**Warnick:** You wouldn't even have to come here.

**Conti:** You wouldn't even come in front of us.



**ZBA- 10-2023 (E)**

**Machelor:** No one is going to police the chickens so they could run wherever they want.

**Spencer:** So, the coop itself would have to be on his land.

**Warnick:** Which is more than 5 acres.

**Conti:** It has to be more than 5 acres.

**Warnick:** So, but if it's on there then you don't have to come here.

**Machelor:** And then you would have to put it on his land of the place that's allowed in other words setbacks and all the other things that go on. We don't know what those are right here. So that's an option if you are in a friendly relation with this guy or people.

**Spencer:** Well, he has cows and chickens and he lives I can see his house from mine. So, I don't know I haven't spoke to him but I don't know if that would be you know if he would allow that. I don't know that I can move my coop isn't just little coop its quite big. So, to move it I don't... And he also farms that land behind my property so I don't think that would probably work.

**Machelor:** I don't know how to help ya.

**Maggard:** Well last year we just turned down a person that wanted to let his children see how to raise chickens and they only has about 3 of them.

**Conti:** No I don't know how many chickens they had but they has half to 3 questers of an acre so not much less than you have.

**Machelor:** It's the same problem

**Maggard:** Same issues

**Machelor:** reasons we said you can't do that.

**Megan:** After listening to everything like beforehand, I was like were in the wrong place we should just be at the Town Board fighting the law instead of like here.

**Conti:** That's an option

**Megan:** Wasting your guy's time

**ZBA- 10-2023 (E)**

Machelor: Well, it's a pretty rural Town on a pretty Rural County there's a lot of farms and a lot of chickens and all the other animals out there but when you get to our town, we said well were going to try and keep the animals on the farms.

Heuck: They didn't want another Niagara Falls.

Warnick: I don't know what that means.

Heuck: I don't know either.

Maggard: If you know of anybody with 5 acres or more you could take your chickens there.

Warnick: That's up to them.

Megan: Well, I actually do but...

Serianni: Not helping your case on the record.

Spencer: Ok so I guess I at this point I don't know because I know there was a complaint made and obviously, I don't want to kill my chickens and they are our pets basically umm... What will happen now?

Conti: Well, that's up to the building once we render our decision tonight then the building inspector will probably contact you and...

Wisnieski: You would have to talk to Chris.

Conti: And you guys can determine at that point what you need to do to be in compliance with what we decided with zoning code.

Megan: Ok

Conti: If that means getting rid doesn't mean killing your chickens could mean bringing them down to a farm that you know that has 5 acres that will allow you to bring them down there.

Maggard: Maybe a chicken farm

Spencer: We've has them for a couple years so that would not be good for them. If moving chickens is highly stressful for them, they won't make it.

Conti: Is there anything else that you wanted to add cause we got an open still have someone that's wants to speak.

**ZBA- 10-2023 (E)**

Spencer: No, I appreciate your time thank you so much.

Machelor: The public hearing is still open would you like to speak to this?

Yes. Good evening, I am Kelly Gombert and I live at 2573 Moore Road and I am east of Bonnie Spencer. Directly next door. I prepared a statement I would like to read.

Conti: Sure, just come up to the microphone it will pick up better. Yeah, that doesn't work real good.

Machelor: Just a little closer that will do.

Gombert: How that better. So, I am here this evening in response to her request for a variance to the land requirement to own and house farm animals. It was over 2 years ago that Bonnie converted her shed and inquired several chickens without regard to the Town ordinance. At that time, she said she wanted to let them free range and I asked that they be kept on her property. Over the past 2 plus years they have indeed allowed them to free range where ever the hens wanted. They have frequently been on my property scratching and causing damage in my gardens leaving their droppings on my driveway on my door mats my cedar trees and cause my dogs to bark and chase and roll in the droppings left behind. I found them constantly in my side yard my back yard and grazing walking up the center of my back yard. As evidence by their droppings, they have been all the way over to second driveway so venturing across approximately 300 feet of frontage. I have repeatedly asked the hens be made to stay on their property. When I found hens in my garden and Bonnie was present, I said she's in my garden Bonnie's response was oh she's just scratching. So, by that remark and her actions she to me feels intitled to allow these hens to be where ever they wonder to without regard to boundaries. There's a reason you need a minimum of 5 acres of land to house farm house and maintain farm animals. That is so that your animals have room to graze move about and not create problems for your neighbors or decreasing their quality of life. These hens free ranged regularly up until about 3 weeks ago after I filed a formal complaint. After that either Bonnie or her daughter Megan had been outside attempting to keep them on their lot while out of their coop. In conclusion I would like to reiterate that this issue has been going on for over 2 years not 2 days 2 week or 2 months. I repeatedly asked for them to be contained and up until 3 wees ago that did not happen. I am not confident that my quality of life will not be affected by the continue actions and lack of actions by Bonnie Spencer and her family if you should grant this variance. I spoke with the zoning officer earlier today and learned that by granting a variance the land owner is not under any stipulations to type or limit of farm animals. So I respectfully request that the variance not be granted because there's been no demonstration over the past 2 plus years of positive farm animal stewardship nor does the property in question come close to the 5 acre minimum. Thank you!

**ZBA- 10-2023 (E)**

**Machelor:** Public hearing is still open I don't see anyone else no one else wants to talk about this. So, I will close the public hearing and ask the board if they have any questions at the petitioner. Hearing none I would like to ask for a motion.

**Maggard:** It's pretty straight forward.

**Serianni:** Hold on before just make a finding that it's a type 2 for SEQRA purposes.

**Machelor:** Oh

**Heuck:** Is there a SEQRA?

**Serianni:** Well, you just make a finding that it's a type 2 you don't have to make a motion because it's an area variance just like you were to grant one you have to make a finding that it's a type 2 or deny one.

**Machelor:** Ok. Alright

**Conti:** You can do it

**Machelor:** Alright we would like to have a finding that it's a type 2 type 2

**Conti:** Type 2 Anthony?

**Serianni:** Yes type 2

**Conti:** I will have a finding that it's a type 2.

**Machelor:** Ok now, do we vote on that Anthony?

**Serianni:** Nope you don't need to vote.

**Machelor:** Ok alright who made the motion

**Gombert:** Can I ask a question could you explain what that all ment what is a type 2 and why are you not voting

**Conti:** Were not voting we are voting

**Gombert:** Oh, I am sorry

**ZBA- 10-2023 (E)**

Serianni: This aside from the variance this is for State Environmental quality Review it's required for any governmental action area variances are type 2 which means the board doesn't need to consider the impact on the environment. Ok

Gombert: Ok

Machelor: Thank you Anthony! Alright a motion anyone want to make a motion?

Heuck: I would like to make a motion

Machelor: Ok

Heuck: Based upon the factors that we have examined as a board I find the benefit of the applicant does not out weigh the detriment to the neighborhood or community and therefore the variance request is denied.

Machelor: Ok motions ben made second?

Conti: I will second it.

Machelor: Motions been made in the seconded and further discussion from the Board? Hearing none I will call the question. All those in favor say AYE

Members: AYE

Machelor: Opposed Lisa please poll the Board

Wisnieski: Joseph Conti: AYE, Gary Heuck: AYE, Norman Machelor: AYE, Marjorie Maggard: AYE, David Warnick: AYE

Machelor: Ok denied.

Serianni: Have we made a motion to adjourn?

Conti: We got that last thing to do here time change

Heuck: The time change

Maggard: We got to do that?

Machelor: Time change

**ZBA- 10-2023**

Warnick: Yes

Maggard: Oh yes.

Heuck: It's November the 5<sup>th</sup>

Maggard: We have to make it and we have to vote on it

Machelor: Right. You know somebody has to make the motion to change to change our time from 6:30 to 6:00

Serianni: Can I just make one comment about that. I think that we represented to the modern neighbors that net month's meeting was going to be at 6:30. So...

Conti: Probably start if we do this why don't we do this January 1<sup>st</sup> no

Warnick: They're not going to send the letters out we don't need a big dude yelling at me for wearing shorts again.

Machelor: I thought it was only Gary.

Warnick: I flew a helicopter 7 years and I never got blinded by a solar panel.

Machelor: You weren't paying attention Dave obviously

Conti: So anyway, back to the case at hand what are we doing.

Machelor: Well, I would like to change it to 6:00 for November

Conti: Why don't you just do it for December 1<sup>st</sup>

Warnick: December 1<sup>st</sup> yeah and that way they don't get a cause they think it's at 6:30.

Machelor: Oh ok. Alright well is it a motion that we make

Serianni: Yep, make a motion

Machelor: I make a motion that we change time that the Zoning Board meets to 6pm on the second Thursday of the month beginning on December 1<sup>st</sup>. Beginning as of December 1<sup>st</sup> for December 14<sup>th</sup> meeting

Warnick: Second

ZBA-10-2023

Heuck: Question I forgot the question

Machelor: Well, I forgot the answer

Conti: Well, let me ask this question Anthony is this going to affect you getting here?

Serianni: No. I sit around at Seaman Norris waiting to leave most of the time so...

Machelor: Well, that's the way it is at home too waiting to come at 6:30 my wife says well make a note

Conti: All in favor

Members: AYE

Conti: Opposed. Make a motion to close the meeting

Maggard: Yeah, yeah yeah

Members: Second

Machelor: All in favor AYE

Respectfully submitted by



Lisa Wisnieski  
Building Dept Clerk



Norman Machelor  
Chairman

