



TOWN OF LEWISTON
1375 Ridge Road
Lewiston, New York 14092
(716) 754-8213
www.townoflewiston.us

ZONING BOARD OF APPEALS

**Thursday – August 10, 2017
7:00 P.M. – Town Hall**

- A. Variance Request – Cafarella – Ridge Road – SBL# 102.09-2-7**
- B. Variance Request – Adams – Lower River Road – SBL# 87.10-2-4**
- C. Variance Request – Montante – Lower River Road – SBL# 73.18-1-27**
- D. Variance Request – Sperduti – Powell Lane – SBL# 101.08-1-66**
- E. Miscellaneous**

PLEASE NOTIFY SANDY IF YOU CANNOT ATTEND



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Fee 135.00 Date Paid 7/28/17 Hearing Date 8/10/17 Approved Denied

#23545
7318-1-27

Appeal to the Zoning Board

Area Variance, Use Variance and/or Interpretation

	Applicant	Owner(s) (If not applicant)	Attorney/ Agent
Name	<u>Thomas Montante</u>		
Address	<u>4324 Lower River Road Lewiston, NY</u>		
Phone/Fax	<u>716 876 8899</u>		
Email	<u>tmontante@montante.com</u>		

Property Information

Property Address 4324 Lower River Rd Side of street (north, east, etc.) _____

Tax Parcel No 73.18-1-27

Date acquired by owner 1972 Zoning District when purchased Residential 1

Present use of property Residential 1 Current Zoning District: Residential 1

Has previous ZBA applicant/appeal been filed with property? Yes No If yes, when? _____

For what _____

Is property located within a 500' of a State Park, town or city boundary or county/state highway? yes

CR 1197
State Hw 18F

Brief description of the proposed action Install 6 foot high
fence, 1 foot north of the southern
boundary line of L-2483.

Is there a written violation for this parcel that is not the subject of this application? Yes No

Has the work, use or occupancy to which the appeal relates already begun? Yes No

Identify the type of appeal you are requesting Area Variance Use Variance Interpretation

Area Variance - Please answer the following (add additional information as necessary)

That applicant has requested relief from the following Town of Lewiston Zoning Ordinance(s) (Please provide the Article Numbers)

360 - 28 - height restriction of 4 ft.

Dimension Requirements	To	From
<u>Fence</u>	<u>6 ft.</u>	<u>4 ft.</u>

Additional Information _____

In order for the Zoning Board of Appeals to grant an Area Variance, it must fully and carefully balance the benefits to the applicant with the health, safety and welfare of the neighborhood and community, taking into consideration ALL of the following.

I. Whether the benefit sought by the applicant can be achieved by other feasible means. Identity what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc) and why they are not feasible.

Other feasible means have been exhausted. However, the relationship between the neighbor, Mr. Mike Fox and Montante's is presently and has always been neighborly. While Mr. Montante made numerous requests and attempts to keep the area in question wooded as a natural barrier, the neighbor has encroached over the property line with a part of his residential garage structure (See Exhibit 'A' for photos of this condition) and storage of his garbage cans. Additionally, a portion of the neighbor's driveway pavement and an 8' wall is across Mr. Montante's property line (See Exhibit 'A'). In addition, Mr. Fox continues to take personal liberties regarding encroachment over the property line. This situation is threatening the peaceful existence of the two parties, which Mr. Montante seeks to eliminate with the construction of this 6' tall fence. In addition, Mr. Montante wishes to block the sight of Tennessee Gas, National Fuel's pipe line station, which is unsightly and de-values Mr. Montante's property. (See Exhibit B). There is no other solution other than the requested 6' fence.

II. Whether granting the area variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons:

The addition of this fence will in fact be an enhancement to the neighborhood, as Mr. Montante will continue to be able to enjoy his property without fear of encroachment by his neighbor. A better definition of the property line and a clearer separation of Mr. Montante and his neighbor's respective properties are essential to maintaining the peaceful existence of the two parties. Further, the fence being proposed is decorative, of high quality wood and is aesthetically consistent with similar fencing in the neighborhood (See Exhibit 'C' for a sample of the fencing). In contrast, the fence being proposed on Mr. Montante's property is far more aesthetically consistent and of much higher quality than the existing 6' high *chain link* fence on the nearby Tennessee Gas property (See Exhibit 'B' for photos).

III. Whether the variance is substantial. The Zoning Board of Appeals (ZBA) will look at the magnitude of relief sought by the applicant and compare it to the current Zoning Law. **For example, if the applicant is seeking a variance for a 6 foot side yard setback and the Zoning Law states a minimum 10 foot side yard setback, the ZBA will decide if granting a variance for 6 feet is substantial or not.**

The determination of a 6' tall fence is driven by the desire to provide an effective barrier between the two properties; prevent any future encroachment over the property line; provide Mr. Montante sufficient privacy from his neighbor, who has shown a history of encroachment and alienation of Mr. Montante's property; and provide a sufficient barrier to block the line of sight to the neighbor's unsightly garages, work bays and storage areas. We feel that a 6' high fence is a simple solution to this problem, and that these privacy and line of sight concerns would not be addressed with a 4' high fence, as that height would not effectively block line of sight for the average person. The 6' tall wood fence that is being proposed is tactfully within the character of the neighborhood, aesthetically enhances both Mr. Montante and his neighbor's property, and effectively responds to the property line encroachment concerns expressed by Mr. Montante. Furthermore, Mr. Montante is asking for a fence height that is only 2' higher than the allowable height, which will not represent a significant aesthetic deviation from what is currently allowable.

IV. Whether the variance will have adverse physical or environmental effects on neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons.

The proposed variance will not have an adverse effect on the environment, the neighborhood or the district in any way. The proposed fence structure will be open at each end to allow wildlife the ability to freely navigate around the fence, and water flow will not be impacted or restricted in any way as the proposed fence runs parallel with the existing slope.

V. Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of an area variance). Explain whether the alleged difficulty was or was not self-created.

The alleged difficulty was not self-created. On the contrary, Mr. Montante made every attempt to maintain a natural barrier between the two properties, however the neighbor's continued encroachment over the property line has created an unpleasant environment in the area, and has caused a situation where Mr. Montante is subject to unnecessary sight of his neighbor's unsightly garages, work bays and storage areas. Therefore, it is assessed that the liberties and activities taken by the neighbor and the alienation of Mr. Montante's property are the cause of this request.

Applicant Signature

I/We the property owner(s), or purchaser(s), lessee(s) under contract of the land in question, hereby request an appearance before the Zoning Board of Appeals.

By the signature attached hereto, I/We believe the information provided within this application and accompanying documentation to be true and accurate. I/We further understand that intentionally providing false or misleading information is grounds for immediate denial of this application.

Furthermore, I/We hereby authorize the members of the Zoning Board of Appeals to enter the property associated with this application for purposes of conducting any necessary site inspections related to the fact finding process with regard to this pending application.

J. M. Montante

Signature

Signature

7/27/17

Date

Date



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23524
87.10-2-4

Appeal to the Zoning Board

Area Variance, Use Variance and/or Interpretation

Applicant

Owner(s) (If not applicant)

Attorney/ Agent

Name Tom and Becky Adams
Address 12668 Carmel Country Road, #58, San Diego, CA 92130
Phone/Fax 858-922-7242 (cell)
Email becky@flourishpress.com

Property Information

Property Address 4539 Lower River Road Side of street (north, east, etc.) east
Lewiston, NY 14092
Tax Parcel No SBL: 87.10-2-4 SWIS: 292489
Date acquired by owner 1/5/17 Zoning District when purchased R-1
Present use of property residence Current Zoning District R-1
Has previous ZBA applicant/appeal been filed with property? Yes No If yes, when? _____
For what n/a
Is property located within a 500' of a State Park, town or city boundary or county/state highway? no

Area Variance - Please answer the following (add additional information as necessary)

That applicant has requested relief from the following Town of Lewiston Zoning Ordinance(s) (Please provide the Article Numbers) _____

360-38C

Dimension Requirements	Variance request	
	To	From
<u>Southeast corner of garage</u>	<u>21 feet</u>	<u>25 feet</u>
<u>to encroach 4.06 feet into ¹⁶25-foot</u>	<u>21.42</u>	<u>25.66</u>
<u>rear yard setback.</u>		
Additional Information <u>4.24</u>		

In order for the Zoning Board of Appeals to grant an Area Variance, it must fully and carefully balance the benefits to the applicant with the health, safety and welfare of the neighborhood and community, taking into consideration ALL of the following.

I. Whether the benefit sought by the applicant can be achieved by other feasible means. Identity what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc) and why they are not feasible.

As one alternative to requesting this Area Variance, we considered the possibility of moving the entire house and garage forward (toward Lower River Road) by the 4.06 feet we are requesting in this variance. That is not a viable option, however, as it will position our house so that it appears closer to the street than our neighbor to the north, and will limit that same neighbor's view to the south.

One other alternative to requesting this Area Variance is to make the garage detached and locate it in the southeast corner of the property. In that scenario, only a 5-foot setback is required from the south and east property lines, which would position the garage significantly closer to the property line than the variance we are requesting.

II. Whether granting the area variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons.

The variance we are requesting will not produce any kind of undesirable change in the character of the neighborhood. The position of the garage's encroachment into the ~~25~~ foot rear yard setback will not even be visible from the street.

25.66

III. Whether the variance is substantial. The Zoning Board of Appeals (ZBA) will look at the magnitude of relief sought by the applicant and compare it to the current Zoning Law. **For example, if the applicant is seeking a variance for a 6 foot side yard setback and the Zoning Law states a minimum 10 foot side yard setback, the ZBA will decide if granting a variance for 6 feet is substantial or not.**

We are seeking a variance for a ~~4.24~~ foot variance into the ~~25.66~~ foot rear yard setback. We don't believe this is a substantial distance. Please see the area highlighted in yellow on the attached sheets. This shows that the area of encroachment is on the southeast corner of the garage only.

4.24

25.66

IV. Whether the variance will have adverse physical or environmental effects on neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons.

The variance we are requesting will not have any physical or environmental effects on the neighborhood or district as neither of those things are affected in any way by this request.

Brief description of the proposed action _____

We are planning to build a new home at 4539 Lower River Road. Our new home is designed to have a very similar footprint to the house previously located there, with the exception of an attached garage that will be located behind the house. In order to keep the new house in a similar location to the former house, the southeast corner of our proposed garage will encroach 4.06 feet into the 25-foot rear yard setback. We are asking for an Area Variance to allow the 4.06-foot encroachment.

Is there a written violation for this parcel that is not the subject of this application? Yes No

Has the work, use or occupancy to which the appeal relates already begun? Yes No

Identify the type of appeal you are requesting Area Variance Use Variance Interpretation

V. Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of an area variance). Explain whether the alleged difficulty was or was not self-created.


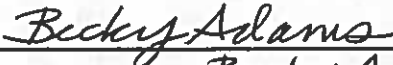
The issue with the proposed garage location was created because of our desire to have a garage that is attached to our house. We want our new house to take full advantage of the beautiful Niagara River view and therefore want to locate the garage behind the house so we can maximize the view from the living areas of our house.

Applicant Signature

I/We the property owner(s), or purchaser(s), lessee(s) under contract of the land in question, hereby request an appearance before the Zoning Board of Appeals.

By the signature attached hereto, I/We believe the information provided within this application and accompanying documentation to be true and accurate. I/We further understand that intentionally providing false or misleading information is grounds for immediate denial of this application.

Furthermore, I/We hereby authorize the members of the Zoning Board of Appeals to enter the property associated with this application for purposes of conducting any necessary site inspections related to the fact finding process with regard to this pending application.

 _____ Signature <i>Tom Adams</i>	 _____ Signature <i>Becky Adams</i>
<i>7/14/17</i> _____ Date	<i>7/14/17</i> _____ Date



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Fee \$135.00 Date Paid 05/02/2017 Hearing Date 8/10/17 Approved Denied

23333

Appeal to the Zoning Board Area Variance, Use Variance and/or Interpretation

Applicant

Owner(s) (If not applicant)

Attorney/ Agent

Name HEATHER CAFARELLA

Address 953 RIDGE ROAD LEWISTON, NEW YORK 14092

Phone/Fax 716-531-3987

Email heatherrory@live.com

Property Information

Property Address 953 RIDGE ROAD Side of street (north, east, etc.) NORTH

Tax Parcel No 102-09-2-7

Date acquired by owner 07-02-2015 Zoning District when purchased R1

Present use of property PRIMARY Current Zoning District R1

Has previous ZBA applicant/appeal been filed with property? Yes No If yes, when? _____

Is property located within a 500' of a State Park, town or city boundary or county/state highway? NO

Brief description of the proposed action BUILD IN-LAW HOME

Is there a written violation for this parcel that is not the subject of this application? Yes No

Has the work, use or occupancy to which the appeal relates already begun? Yes No

Identify the type of appeal you are requesting Area Variance Use Variance Interpretation

Area Variance - Please answer the following (add additional information as necessary)

That applicant has requested relief from the following Town of Lewiston Zoning Ordinance(s) (Please provide the Article Numbers) ~~306-5C~~ 360-36(c) HB

Dimension Requirements	To	From
75 Ft Wide	70 Ft	75Ft

Additional Information: I am requesting to parcel off part of my lot to build a small home for my Mother who suffers from TBI (Traumatic Brain Injury) I am my Mother's legal guardian. Lewiston requires 75 Ft of road frontage and I only have 70Ft. This house would allow my mother private & proper care / therapy that she is not getting from the nursing homes that have cared for her since her accident in 2011. Home care is encouraged by NYS in the case of my mother.

In order for the Zoning Board of Appeals to grant an Area Variance, it must fully and carefully balance the benefits to the applicant with the health, safety and welfare of the neighborhood and community, taking into consideration ALL of the following.

I. Whether the benefit sought by the applicant can be achieved by other feasible means. Identity what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc) and why they are not feasible.

PRIMARY RESIDENCE IS HISTORIC – CAN NOT ATTACH IN-LAW HOUSE ON TO HISTORIC HOUSE

PRIMARY RESIDENCE CURRENTLY HAS 2 OUT BUILDINGS (BARN / GARAGE) ON PROPERTY

NO AVAILABLE LAND AVAILABLE FOR PURCHASE

II. Whether granting the area variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons.

PRIMARY RESIDENCE PROPERTY MEETS ALL BUILDING REQUIRMENTS (IN LINE WITH EXISTING HOMES AND 1000 SQ FT MINIMUM) EXCEPT FOR THE 5 Ft THAT WE DO NOT HAVE.

III. Whether the variance is substantial. The Zoning Board of Appeals (ZBA) will look at the magnitude of relief sought by the applicant and compare it to the current Zoning Law. For example, if the applicant is seeking a variance for a 6 foot side yard setback and the Zoning Law states a minimum 10 foot side yard setback, the ZBA will decide if granting a variance for 6 feet is substantial or not.

SEEKING A VARIANCE FOR 70 FT WIDE LOT AND THE ZONING LAW STATES A MINIMUM 75 FT WIDE LOT

IV. Whether the variance will have adverse physical or environmental effects on neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons.

ITS A RESIDENCE

V. Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of an area variance). Explain whether the alleged difficulty was or was not self-created.

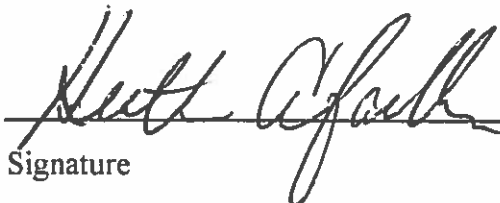
THIS WAS NOT SELF CREATED. IT IS NOT A FINANCIAL DIFFICULTY, IT IS BEING REQUESTED FOR A FAMILY MEMBER TO LIVE FOR A BETTER QUALITY OF LIFE AND TO RECEIVE THE PROPER CARE FOR HER SPECIFIC MEDICAL NEEDS.

Applicant Signature

I/We the property owner(s), or purchaser(s), lessee(s) under contract of the land in question, hereby request an appearance before the Zoning Board of Appeals.

By the signature attached hereto, I/We believe the information provided within this application and accompanying documentation to be true and accurate. I/We further understand that intentionally providing false or misleading information is grounds for immediate denial of this application.

Furthermore, I/We hereby authorize the members of the Zoning Board of Appeals to enter the property associated with this application for purposes of conducting any necessary site inspections related to the fact finding process with regard to this pending application.


Signature

Signature

7-20-17
Date

Date