

## ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York  
Thursday – August 13, 2020

Present: Conti, Heuck, Machelor, Maggard

Absent: DeCastro

Presiding: Norman Machelor, Chairman

Machelor: I would like to call the Zoning Board of Appeals meeting to order. I would like you if you're able to stand for the Pledge of Allegiance.

**A motion to approve the minutes of July 2020 was made by Heuck, seconded by Maggard and carried.**

Machelor: If you have not attended a Zoning Board of Appeals meeting before the task of the Board is to grant or deny 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 a denial to prohibit a project as presented. Does everybody understand the purpose of that? That's why it's called a variance. The Town Code says certain things, you bring your project here, we say that's not in compliance with the Code and sometimes we are able to say we will allow you to do that anyway because of the findings of your particular case.

The first item on the agenda was a request from Susan Burnham, 568 Fairway Drive, SBL# 115.07-2-18 for a use variance to allow for a hair salon in the home. The property is presently zoned R-1, one family residential.

Machelor: Would you please come forward and give us your name and address for the record.

Susan Burnham, 568 Fairway Drive. I'm looking to put my salon in my house. I've been doing hair for 18 years and I'm looking to fit it in the house given all the circumstances. I wouldn't be building on to the house. I have a garage that was turned in to a master bedroom. I was hoping I could do this.

Machelor: Use variances are very difficult. In order to be granted a use variance there is a formula that we follow of all the things that has to happen in order for us to say yes okay we

will approve a use variance. We vote too but we follow the law here. For example, one of these items in the use variance is, cannot realize a reasonable return which is financial as shown by a financial evidence like a hardship. You have to do certain things because it's a financial hardship. You have to say what you plan on doing wouldn't alter the character of your neighborhood. What else is in your neighborhood that would be compatible with what you want to do. And that this hardship isn't self-created, in other words people come here and ask for variance changes because of the circumstances of where they are, the property, all kinds of stuff and say well I'm in this spot, I can't do anything but this and can you help me out. With that being said, I would like to have the Board ask any questions that they have about your use.

Conti: One of the things he was explaining was that you cannot realize a reasonable return....the lack of return is substantial demonstrated by a competent financial evidence which you left as N/A, non-applicable. We have 4 criteria that the state requires us to hit. Every one has to be substantiated. Right off the bat the first one you have no information on it at all. We would need competent financial evidence. On the first thing right off the bat.

Burnham: I guess I don't understand the question.

Seaman: The question relates to the property itself. Use variances are really difficult to obtain. I think if you looked across the entirety of New York State you're under 1% approval rating across the State. You have to achieve every one of these things. If they are not achieved the Board has very limited ability to massage it. Area variances are a little bit different but when you're asking to use a piece of property in a way that's not allowed by the local zoning law you have to explain it. As far as the financial question goes it refers to the value of the property itself. Right now, you are talking about a residential home. The question would then be you couldn't realize a reasonable rate of return for that home if you weren't able to in your case put a salon in that home. It would be a difficult thing I think for you guys to demonstrate that because, I'll let you speak to that if you want to but I'm just thinking as a residential home it would realize a reasonable rate of return.

Conti: On the paperwork that you submitted you said in 2016 you purchased it for \$207,000. And you added on approximately \$28,000. in improvements over the last 4 years. You're saying the value now is \$250,000. What you purchased the house for and with the improvements you added that makes it \$235,000., you're saying the value is at least \$250,000.

Josh Burnham, I'm Susan's husband. I just wanted to clarify whether or not it's related to the physical residence or it's related to her business?

Seaman: It's related to the property itself. It's even hard sometimes to come up with examples that do fit in a category. You would see this with a piece of land that had been previously quarried or a piece of land that someone purchased it but then a tornado or hurricane came through and changed it so that it couldn't be used for anything other than such and such. It was previously zoned residential but now some natural event came through and made it under water. Now it could really only be used for a dock. Now this is a scenario that is not of your

own creation. It's still zoned residential but it's under water, the only way I could sell this piece of property would be if I turned it in to a marina. It's not my own creation. It wouldn't hurt the character of the neighborhood. It relates to the property you purchased.

Burnham: Given the circumstances now with Covid and everything her clientele, obviously there are more gaps in her services that she can provide which limits .....her rent would be reduced or taken away. Financial hardship for her would be relieved at that point.

Conti: That has nothing to do with a use variance itself.

Burnham: I understand.

Conti: It's very strict on what we have to follow. The first one right off the bat there is no information as far as....and it wouldn't prove it out anyway unless you had competent financial evidence that says, like he said if you don't put the salon in the house you'll never get the money back for that house what you put in to it, which you obviously already would. In today's market they are paying way over.

Burnham: You solely take that in to consideration?

Conti: That's the first one and everyone has to be substantiated. It has to be filled before we can even attempt to approve or disapprove it. Right off the bat there is no information for the first one.

Machelor: The difference here between a use permit which you are asking for and if you were to stay here later you would hear people ask for variances not on the use but on the area. We have discussion in those cases to decide how much of a change it's going to be and how will that affect the neighborhood. The neighbors get to get in on it. But when you come here for a use variance....

Burnham: Can I ask you just in general can you educate me on the use variance and the origin of the use variance, why this is in place, what does the Town have to do with a use variance from the standpoint of why do you care what our value is.

Seaman: It's a zoning regulation, it's a zoning rule. Historically it's how communities have developed in New York. You have zoning laws that apply.

Burnham: It's not going to change anything with the area.

Seaman: There is an area of the Town that meant for residential and designed and set up in such a way that the community in theory the way the community is going to develop the way your community leaders expect it to and want it to in accordance with the community. That's what zoning is.

Burnham: It should be there to protect.

Conti: It does protect the neighborhood so that people don't start putting in businesses along with people trying to live a nice quiet residential life. You have more businesses moving in to a neighborhood now, traffic is increased, maybe not in this particular case but this is what the zoning is put in for to protect your neighbors from all of a sudden everybody opens up a business in the neighborhood and all of a sudden it becomes Center Street.

Burnham: That's why we're here and that's why there is a variance. That's why we applied for a variance so you can review it and go okay this isn't going to change or yes....

Conti: These are New York State Laws, not Town of Lewiston laws. Everything has to be met.

Seaman: To help you guys understand it, go through each of the 4 so the record reflects you've considered all 4. The second one is: That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Again, the use asks for you to answer the question to that property. What is unique about your property that requires you to use your property in such a way that the zoning laws of that area shouldn't apply to you. That is what it's asking. Do you understand what I'm saying? If you go back to my hypothetical earlier of someone's lot turning in to a lake, that would be a unique scenario. That is the question. I guess the question could be posed to you guys for the record what are alleging is there a hardship related to the property that is unique and does not apply to the substantial portion of the district or neighborhood? Each one of these is pretty difficult to satisfy.

Conti: You're looking at her business and her. The use variance is the property itself, not you or your business. It's the property that you want to change.

Burnham: Have you as a Board ever approved a use variance?

Conti: Not that I know of off the top of my head.

Machelor: Not in my time.

Conti: It is less than 1% of the cases, even across New York State. It's very hard. The confusion I think is it's not about you, it's about the piece of property.

Seaman: Just for the record I want to go through all these, #3 and maybe you can answer this one, that the requested use variance if granted would not alter the essential character of the neighborhood? You could probably make an argument that it would be true right?

Burnham: That's definitely true.

Seaman: What would be your argument in that case, that what you're asking for and granted would not alter the essential character of the neighborhood.

Susan Burnham: I wouldn't be building so there won't be a structure on our property. I'll be using my house. I'll have a separate entrance. There won't be signage. I would only have 1 or 2 people considering it's just me. Nothing would change. I live right off of a busy street so they won't be going through the neighborhood.

Machelor: The character is residential one, R-1. When people buy a residential R-1 property what they expect if they look at the zoning law is these are the things I'm allowed to do here and these are the things that I'm not allowed to do here. People make decisions on what to buy on that basis. You could say you're as quiet as a mouse and yet there could be somebody down the street that decides to open a men's barber shop and says I should have a barber shop too because so and so has a salon. Then we are stuck because we say this is a residential neighborhood and we're not supposed to have those here. Our attorney is going through this, I will do the fourth one, that the alleged hardship has been self-created. Self-created means you made a decision on your own to try to do this, nobody forced you to do it. There are no circumstances that say you have to do this. You're coming to the Board and said I want to do this and it's not in accordance with the zoning and will you give me a variance to do it?

Burnham: Considering what's going on with the Corona Virus it's put me in this position. Of course, our sons are young, schooling, we don't know what's going on with that. We would like to be able to be home.

Machelor: Where do you practice your trade?

Burnham: Right now, I'm on Center Street, Salon Jule. It's just my sister and I. We're already a small business.

Josh Burnham: Her sister Julie will still be there. She would probably get another tenant to rent a chair. It wouldn't be affecting Center Street. She has established clientele already.

Machelor: There is an alternative obviously. You have an alternative of working on Center Street, right?

Burnham: I work there now but with everything that's going on and all the extra things we have to do, regulations and guidelines, I cannot fit the amount of clients in as I was before this so I'm not making as much money. It's probably 40% less and I still have the same overhead, actually more now with all the cleaning supplies and other things. I'm almost losing at this point. Putting it in my house would help me.

Maggard: I think our biggest concern is that if we allow you to have the use variance then we have to allow others to have it. It has to be equal across the board. It just doesn't make sense.

Burnham: I don't think that's fair to say.

Conti: Each case is going to be different but you still have to prove all 4 criteria. You are right each case is different. We look at each case individually. We have to go through all 4 of the criteria to see where you sit on each one of them. I'll go back to the financial part, you have to have a competent financial evidence, you have to get a competent financial person to go in and actually write it all up for you. It's pretty detailed to do.

Machelor: Is there anyone in the audience that would like to address this under the public hearing regulations?

Public hearing closed.

**A motion to deny the use variance as per the findings of the facts the applicant cannot demonstrate a reasonable return evidence, that the property being affected is unique or uncommon circumstances, the character of the neighborhood would not be changed, and that the hardship was self-created with concerns that Covid was part of it with having children and homeschooling, with those four criteria was made by Conti, seconded by Maggard and carried.**

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

The next item on the agenda was a request from Michael Schroeder, 2476 Moore Road, SBL# 76.00-2-53, for an area variance from Section 360-187 Animals, to allow to have 8 chickens on less than five acres. The property is presently zoned RR, rural residential.

Public hearing opened

Michael Schroeder, 2476 Moore Road. The kids have been home schooled and I have 2 children as you can see and hear, sorry, I had no babysitter tonight. They have limited amounts of how they interact and what they can do. During home schooling especially it was extremely difficult. My other two, it's a little different. One of the things we wanted to do is get them interacting and doing something they could do. One of the things we thought about was we have a farm right down the road, raising chickens. Bobby could help me in getting the coop that we keep them, Isabell feeds them every day, Sophia can help do that, Jack can interact with them so it's like a family project during home schooling. Jack and Sophia will be home schooling in the fall because there isn't an option for them. This is something during the course of the day when they're not getting therapy or their teachers are attempting to do a zoom lesson they can go out and do something in the backyard and interact with them. That was the original plan. I had no idea with the farm right down the road that chickens until Chris from the Building Inspector told me and he suggested coming to you guys, paying \$150. And coming to you guys if we wanted to keep them. I really don't want to take their chickens away from them. They have bonded with them. They sing to them, talk to them. It's the friendliest batch of chickens ever.

Machelor: How long have you had them?

Schroeder: We got them shortly after the schools went, late March, early April.

Machelor: Less than 6 months?

Schroeder: Yes. They've seen them grow. They are now starting to lay eggs.

Machelor: How many are there?

Schroeder: Well we had 8 originally. We lost one of them. I think a raccoon got one. We have 5 hens left, 2 roosters, although I think we will get rid of one of the roosters. Sometimes when there are too many roosters, it's like too many chefs in the kitchen. One of them I don't think is going to make it. We've nicknamed him crazy Larry. We're never sure where he's going to go. It will probably be 5 and 1 rooster.

Conti: You realize now the Town ordinance says you need 5 acres for chickens. You have .575 of 1 acre. What you're asking for is extremely substantial as far as allowing us to change the zoning for this particular thing. We pretty much have to drop off 4.5 acres off that rule for this. It's extremely substantial.

Schroeder: If I had to do it again, I wouldn't have done that but with the farm with chickens 3 houses down.

Conti: That's a farm and they must have over 5 acres. You have a 100'x250' lot. They have a farm. You can't compare.

Schroeder: Originally Buffalo allows chickens. I understand. You have a lot of municipalities that allow chickens.

Conti: The Town of Lewiston does not under 5 acres.

Schroeder: I couldn't conceive it in my mind in the beginning.

Conti: A quick phone call.

Schroeder: I guess but when you have farm yard animals right down the street.

Conti: We can't really compare a farm to a residential lot.

Machelor: The issue, I'm just throwing this in, I live in the Village, we let chickens in the Village. It doesn't make any sense to me but that's the way it is. A chicken coop in the Village. These are Town regulations and that's what we rule on. Joe already mentioned the fact this is a substantial request. In other words, if you had 4.95 acres.....

Conti: Even if you had the 4.5 acres and you were looking for half an acre variance, it's something we can kind of look in to and say yes, it's not very substantial, it's something we can look at. You have a half and you're looking for the 4.5 of a variance.

Machelor: One of the things that we are obviously worried about is the adverse physical or environmental effects which means noise and smell for the neighbors. Of course, if you have a farm on each side of you, you're still so far under on the amount of space that you have.

Schroeder: As far as noise....

Maggard: Do you have any other animals?

Schroeder: I have a dog that is inside most of the day and we have 2 cats that are strictly inside. As for the noise, the chickens usually come out about ten in the morning and usually by early evening they are back by the coop ready to go in for the evening. They are not near any one's home. Next to me is a wooded acre that I think a farmer owns and has not been able to sell. The entire time and probably ten years before that it's remained as it is. I have another neighbor on the other side and I have an apple orchard across the street. I have really one neighbor that could potentially hear it but it's at the back of my lot and he's way up in the front. I don't know how he would hear them.

Maggard: I was just asking if you had any other animals to be able to educate your children with these types of animals that are allowed.

Schroeder: It's different with a cat and raising baby chickens, getting the eggs, taking them and either dropping them off or selling them. That was the agricultural portion.

Seaman: There are a few other considerations that you guys haven't touched on that I think for the record should be discussed. We talked about whether or not the request is substantial. One of the questions is whether or not the benefits sought by the applicant can be achieved by some feasible method other than through this variance request which I think is what Mrs. Maggard was getting at is that the benefit that you are requesting is to help educate the children. I think that is what you were saying as with animals that are permitted. One of them is whether an undesirable change would reduce the character of the neighborhood or detriment to nearby properties.

Schroeder: You guys are going to turn this down. I have a handicapped child that is outside. This is just for the future, the gentleman that I spoke with said this was something that was achievable and it was \$150. I have 2 special needs and actually my one daughter is on the spectrum as well but you can't tell. \$150. to us is pretty substantial. Basically, by going this route I just took \$150. away from them. It might be-hove people to know if they're going to come here that they have little to no chance of success. For a special need's family \$150. Especially with his diet is a lot. That was never conveyed. It was simply said hey you guys can



come here. This is a real possibility for \$150. Maybe you should speak to them because what they're telling people, I wouldn't have brought them down tonight, you can tell it's difficult. I wouldn't have put them through this procedure if I knew this was going to be the outcome. I think educating people on that is definitely lacking because I just spent money I didn't have. Thank you.

Machelor: The hearing is still open. Does anybody else wish to speak to this issue? Anything further from the Board?

Heuck: I would think that maybe we should have a letter sent to them indicating that there are possible alternatives. The farm across the street or even approach the Board to have that zoning because of what happens in the Village is smaller in size of what his was to have that changed as a codification.

Machelor: We could make a motion that we can do that.

Seaman: I agree with you Gary but why don't you guys finish your hearing, make your decision and then make the motion on whatever action you might want to do just so it follows timely so you're not putting one thing in front of the other.

**A motion to deny the request based upon the criteria and also the codifications that are on the books having to have 5 acres of land which they have .575 acre, was made by Heuck, seconded by Maggard and carried.**

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

**A motion that the Board send a letter or the Town Code Officer send a letter indicating that he could have alternatives for the farm across the street possibly, we could ask him to relocate the chickens over there. But also, to give him a sense of feeling that we're trying to help him and that his \$150. did not go to waste. Also, to give him an idea that he can present it to the Town Board to change the zoning code on that particular item was made by Heuck,**

Seaman: Gary made a motion, the one thing I would ask is who is going to write the letter? Do you want your attorney to write the letter?

Heuck: Absolutely.

**Motion seconded by Conti and carried**

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

The next item on the agenda was a request from Robert & Mary Hughes, 5976 Tuscarora Road, SBL# 132.06-1-28, for a variance from Section 360-38B, Yards required from the required 15' side yard setback to 8.26' to allow construction of a 16'x30' garage. The property is presently zoned R-1, one family residential.

Robert and Mary Hughes, 5976 Tuscarora Road. We have a ranch house with a one-car garage. What we would like to do is expand it to a two-car garage on the north side of the property. On the north side we have a neighbor. The current zoning law says we have to have a 15' side setback. We would like to change that in order to build a 15'x30' addition to the garage, we would come within 8.5' of the property line. Right now, we have an asphalt driveway that goes over. It doesn't obstruct anybody's view from the neighbors across the street. The neighbor next door is fine with it. It would be of the same materials, the house is currently brick, it would be pretty much the same material, brick and siding. It will be good quality work. I'm not sure exactly how high it will be. The current roof is approximately 12' high. It won't deviate.

Machelor: The most important part is the foot print at this point.

Conti: Right now, it shows your garage is 15.6' wide and you're going to add an additional 26'?

Machelor: No, he's going to add 16'. The 24' is sort of irrelevant to our issue. The issue is that you can only be closer than 15' to your neighbor and you're asking to be 8' from your neighbor essentially.

Conti: You're going to keep your existing garage correct?

Hughes: Yes.

Conti: A normal two-car garage is 20'x20', 20'x24'. You actually want to go 30' wide. You already have 15' and you're adding 16' on to it, so that comes out to be 31.6' wide.

Hughes: For both of them yes.

Machelor: Do you have drawings or anything made? This is a plot plan.

Mrs. Hughes: We do not have architectural plans.

Machelor: I'm not saying you do. In other words, let's say that we feel that 50% change in the zoning substantial. Somebody comes and says well we need a 30% variance from zoning, it's less substantial than 50%. My point is that if you had 2 garages that were normal 2 car garages, I think this is what Joe was getting to, a normal 2 car garage might only be 22' wide, not 31'.

Conti: You are saying a two-car garage and it's quite a bit wider.

Hughes: Me being a nurse and her being a computer programmer, we just took what we currently have and said okay a two-car garage would be this big. When we originally started talking to somebody who could build this, he said look before we even talk you need to talk to the Zoning Board. We just did what we thought would be good. We said here's 15' and there will be another 15'.

Machelor: I wouldn't say that was good advice.

Conti: He said to check with the Zoning Board. They just kind of figured on their own. We can work with that.

Hughes: If you guys approve it and we go to a contractor and he says it's not going to be that big, it's going to be this, then we'll say okay cause....

Machelor: What I'm saying to you is if you came to us with a plan to make a two-car garage out of your one-car garage and that two-car garage ended up being 22' wide it would be a lot easier to say yes than making it 31' wide.

Conti: You have 15' now width wise for your garage. If you add 11' it would take you to a 26' wide garage. A traditional two-car garage is approximately 20' to 24' correct. Then we would only be at 13.26' to the side setback versus 15'. That is more like a three-car garage. Depending on what you would want to change on that, we can go through right now and figure out what we could give you up to so we could approve what that is at that point. I guess it would be up to you how wide 15.5' plus.

Heuck: How wide is the pad that you have there now?

Hughes: It's has to be 10'.

Maggard: 30' long would give you plenty of room in the back.

Conti: If we said you add on 11' instead of 16', that would give you 26' wide, a two-car garage. Would you be willing to change it from instead of 16' go to 11'?

Hughes: Yes.

Conti: 13.26' versus 15'. You're asking for a side set back variance of 13.26'.

Hughes: Yes.

Seaman: Why don't you round it to 13' for the sake of the builder.

Maggard: So instead of 15' you got 13'? Okay

Conti: You will be asking for a 13' side setback.

Machelor: Is there anyone in the audience that wishes to speak to this?

Heuck: Your neighbor is okay with this?

Hughes: Yes.

Public hearing closed.

**A motion whereas the Zoning Board of Appeals finds that pursuant to prior discussion that the benefits to the applicant outweighs the detriment to health, safety and welfare of the community with the changes to a 2' variance to 13' side setback was made by Conti, seconded by Maggard and carried.**

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

The next item on the agenda was a request from Mark & Linda Thomas, 5888 Garlow Road, SBL# 132.05-1-47 for a variance from Section 360-47B, yards required, from the required 15' side yard setback to 7' to allow construction of a 24'x24' garage. The property is presently zoned RRT, rural residential transition.

Public hearing opened.

Mark Thomas, 5888 Garlow Road. I would like a variance to bring my garage, I'm building a garage 24'x24'. I would like to move it over so it's about 8' left to the property line. It's supposed to be 15' by zoning, I would like to move it to 8' in to that area.

Machelor: It says currently you're 14.9' from the property line?

Thomas: I think that's what I measured the old garage. I tore down a garage.

Conti: You have two plans here?

Thomas: One is I tried to make it so one showed with the variance and one shows without. I have one that green and it shows what it would be with the variance and the one that's red would show without the variance.

Conti: One shows 14.9' side setback and the other one shows 7'. One is a little behind the house.

Thomas: Right behind the garage I want to build is a 3' retaining wall so I can't go back any further. I have to slide it back and forth. If I slide it to the 15' it's going to be behind the house and it's going to create a little alley way there. As much as it's doable to get through there but I have a handicap daughter, a 20-year-old and right now everything is fine but we have to look at the future where she can have access to get to the front yard.

Machelor: This gap that you're speaking of, when you're speaking about that gap that's the 5' gap, it's between the corner of your existing house and where you would put this garage. The garage is not attached and it overlaps the house a little bit.

Conti: How close to the house is that gap?

Thomas: My house is here and my garage is here, 5'.

Conti: How much in between? If I had to walk between those 2 structures.....

Thomas: About 5-6'.

Machelor: The gap is 67". 5.7'. The new one would be 80" and not overlapping.

Conti: The Town code is you have to be at least 5' away from the structure, if not it has to be fire walled.

Thomas: With the variance it will allow me to move it over and will open that area up. I actually centered the garage where the old one was. We had a single small one there that was original from 1941. It was falling apart. This one will fit pretty much as looking at it, it will look symmetrical to where the old one was.

Machelor: According to these drawings it's a one-car garage.

Thomas: It's a 24'x24'.

Machelor: One large door.

Thomas: Yes. One large door.

Mrs. Thomas: It will be a double wide door.

Thomas: The way he drew the plan, I called the Town here and they told me to go to 84 lumber. He drew it up much smaller than what I wanted. There is a front door and a back door.

Conti: The front is here and that has the 16' door?

Thomas: Correct.

Maggard: Mark, will that give enough variance for Erin to get in and out of the house if the possibility arises and she goes in to a wheelchair? That will give her enough room?

Thomas: Yes.

Maggard: I know you can't go back too far because of that wall.

Thomas: I love the wall.

Maggard: Everyone along that road has that wall.

Heuck: Does it have to be 24' wide?

Thomas: I have 3 kids. I have 1 driving now and the other one will be driving next year. We will have 4 cars in the driveway.

Conti: The garage itself is only going to store 2 cars. We're not talking about the driveway itself; we're talking about the actual structure. Can the structure be 24' deep by 20' wide? Is that where you're going Gary?

Heuck: Yes, probably in that neighborhood because normal width of a double wide is usually 20'.

Thomas: I just added it for room and to get the 2 cars in. Like I said I have 2 new drivers and I just want to be able to worry. My daughter and wife's car will probably be in there. If you saw my daughter drive you would understand why I want that extra 2'.

Machelor: Do you have a neighbor on your north side?

Thomas: They have provided a letter for you.

Conti: Going back to Gary's point, is it a possibility to bring it down to 20'x24'?

Thomas: I wouldn't.

Heuck: It would be less than 50%. Right now, it's substantial.

Machelor: You heard this business about substantiality.

Thomas: I do understand that. I really don't see the....i'm over it now 4'.

Conti: You would need 11' instead of 15'. You would be asking for a 4' variance versus an 8' variance.

Machelor: Before you were only 1/10<sup>th</sup> of a foot variance.

Conti: With his daughter and stuff that doesn't work for you having it behind the house. You're not looking at all for that? We are looking for it to be away from the house to still give you an 80" pass through. By going 20'x24', you're only asking for a 4' variance versus an 8' variance.

Thomas: Is it really? I understand, it is substantial I'm not questioning that one bit but we're talking about a couple of feet. The neighbors are fine with it. Everybody is fine with it, a couple feet.

Machelor: Have you had drawings done?

Thomas: I've done everything the Zoning Board has asked me to do.

Machelor: I meant for you if you were going to build this, have you had a builder give you a price and so on?

Thomas: Yes, I have estimates out now. I went to 84 lumber and they drew up the plans already per Tim. He said that's the route to take.

Machelor: The question comes down to is there any less of a building that you would be willing to have as opposed to what you actually asked for?

Thomas: What I asked for is what I want. That's what I'm asking for.

Maggard: Mark, would there be any undesirable change in the neighborhood and the character of the neighborhood if you got the variance?

Thomas: If I the variance no, it would not change a thing about it. It's a, if you seen my garage before hand it had holes in the roof.

Maggard: I did. We lived with it too.

Thomas: It was falling down. The new garage will be sided along with the house that is getting new siding.

Machelor: I imagine if you went to 84 Lumber and you said to the guy, remember when you did me a plan that was a 24' wide building, can you change that to a 20' wide building?

Seaman: I think the applicant has made it clear that he's made this request and the request that is before the Board is what you should consider at this point.

Mrs. Thomas: The Board wants to go down to 20', can we can go 22'?

Seaman: The request that they have in front of you leaves how much of a side setback 8'?

Conti: 7'.

Seaman: 7' instead of 15'.

Machelor: Getting under 50% is an issue.

Seaman: There are 5 different things that need to be considered for this, substantiality is one of the five. I think you might want to go through all five categories.

Machelor: It's a balancing test. I will read these to you and you can listen along. Whether the benefit can be achieved by other means feasible to the applicant. That actually addresses size. Undesirable change in the neighborhood, or detriment to nearby properties. That is something we always think about. Your neighbor is not opposed. Whether the request is substantial, which it is, it's over 50%. Whether the request will have adverse physical or environmental effects. Hard to see any. Whether the difficulty is self-created. In other words, we went through this with the other people, self-created means you have decided that 24' was an appropriate amount of space. That makes the request more than substantial. Do you follow? I'll say it again, the person that is deciding it has to be 7' from the neighbor is you. The self-created part is actually you've created it by deciding that 24' is what you wanted. Those are the tests that we look at to decide what to do, just like we did with the other case but it was different. Everybody is unique.

Mrs. Thomas: I think we are understanding. I guess we wanted the extra space because we have a child who may again be in a wheel chair like she was last year. We wanted extra space to be able to get her out to the car, get her out of the wheel chair, just to have that extra little room. I think that was why we wanted the extra to give us ease of getting Emily in and out of the car and in and out of the wheel chair and that kind of thing.

Machelor: I'm glad you said that. Further discussion from the Board, anyone?

Public hearing closed.

**A motion to approve the variance request was made by Maggard, based on the considerations that were discussed during the hearing for 7',**

Machelor: Do we have a second for the motion as presented? Is there a motion to grant this addition?

**Motion failed.**

Conti: Can we open the floor again since we can't get a second to see if they want to try?

Seaman: You can make another motion to do something.

**A motion to open the floor to talk to the applicants again was made by Conti, seconded by Heuck and carried.**

Conti: I don't want to see you get denied without at least trying to work with you on something because similar to the one we just did prior to you, we had them bring it closer. I know every



situation is different but is there anything we can do to make the width of it somewhat smaller to help make it work?

Thomas: 22'x24'?

Machelor: 22' would certainly get you under the 50% mark.

Mrs. Thomas: That would give us a little room to get Emily in.

Machelor: Then you would be 9' from the property line instead of 15'.

Conti: Are you willing to amend the request to go from 15' side setback to 9' side setback correct? 22'x24'

Mrs. Thomas: Yes.

Public hearing closed.

Heuck: Can I ask the attorney a question? Do we have to make any type of movement as for the amendment for him as the owner of the property and make an amendment to his plans. Does he have to do something?

Seaman: I think the record is clear that they made that adjustment during the last open hearing. That question was posed I believe. Please correct me if I'm wrong but that question was posed and they seemed acknowledged they would amend their application.

Heuck: They nodded their heads.

Mrs. Thomas: Yes, we would amend that application to 22'x24'.

**A motion whereas the Zoning Board of Appeals finds that pursuant to the prior discussion that the benefit to the applicant outweighs the detriment to health safety and welfare of the community was made by Conti with the following conditions, the width of the garage be 22' wide by 24' deep, granting a 6' side setback variance to 9' from the property line, seconded by Heuck and carried.**

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

The next item on the agenda was a request from Mark & Debi Perry, 4639 Vrooman Drive, SBL# 87.00-1-21 for a variance from Section 360-185E, Accessory uses and structures to allow for a garage addition from the maximum height of 18' to 20'. The property is presently zoned R-1, one family residential.

Public hearing opened

Mark Perry, 4639 Vrooman Drive, Lewiston. Can I just say something before we start, the gentleman with the chickens, I might suggest that you get a hold of him before he kills those chickens? Otherwise he is going to be even angrier that he spent the money now and then 3 days from now he hears that maybe there is a way to work but I've already gotten rid of the chickens. Just a thought.

Conti: I wish he wouldn't have walked out when Gary had said the information on that to see if he could use the farm to use some of the land to put the chickens on, the kids can walk down there.

Perry: I want to build a storage structure garage that is attached to the barn I have. Because as part of the construction I want to have the roof tie in to the same level across the back of the barn for ease of construction and at the same time the roof on the current barn is going to be replaced because it's worn out. To match the slope of the current roof we have to cover an opening that's on the east side of the current barn with a roof. It requires that the peak be less than 2' higher than the current code.

Machelor: You've been here the entire time and you've heard about substantiality.

Conti: It's not very substantial of a change. We've talked about trying to get this changed for a little while now and it still hasn't been changed.

Heuck: We've established pretty much a precedence already.

Seaman: You have to accept Tim Master's recommendation for a negative declaration. You make the determination as to whether or not it's a negative declaration.

**A motion to accept the negative declaration for the SEQR was made by Conti, seconded by Maggard and carried.**

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

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

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

The next meeting will be September 10, 2020, at 6:30 P.M.

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

Respectfully submitted,



Sandra L. VanUden  
Zoning Secretary



Norman Machelor  
Zoning Chairman

#### NOTICE OF PUBLIC HEARING

Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals of the Town of Lewiston on August 13, 2020, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Michael Schroeder, 2476 Moore Road, SBL# 76.00-2-53, requests an area variance from Section 360-187 Animals, to allow to have 8 chickens on less than five acres. The property is presently zoned RR, rural residential.

Susan Burnham, 568 Fairway Drive, SBL# 115.07-2-18, requests a use variance to allow for a hair salon in the home. The property is presently zoned R-1, one family residential.

Robert & Mary Hughes, 5976 Tuscarora Road, SBL# 132.06-1-28, request a variance from Section 360-38 B, Yards required, from the required 15' side yard setback to 8.26' to allow construction of a 16'x30' garage. The property is presently zoned R-1, one family residential.

Mark & Linda Thomas, 5888 Garlow Road, SBL# 132.05-1-47, request a variance from Section 360-47 B, Yards required from the required 15' side yard setback to 7' to allow construction of a 24'x24' garage. The property is presently zoned RRT, rural residential transition.

Mark & Debi Perry, 4639 Vrooman Drive, SBL# 87.00-1-21, requests a variance from Section 360-185E, Accessory uses and structures to allow for a garage addition from the maximum height of 18' to 20'. The property is presently zoned R-1, one family residential.

Information concerning these requests are on file and available for inspection during normal business hours at the above-named office. All citizens and persons of interest will be given an opportunity to be heard.

Norman Machelor  
Zoning Chairman  
#N271454

8/6/2020