

ZONING BOARD OF APPEALS

**Town Hall 1375 Ridge Road Lewiston New York
Thursday – February 11, 2021
ZB 2021-2**

Present: Conti, DeCastro, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

Machelor: I would like those that can to stand for the Pledge of Allegiance.

A motion to approve the minutes of November 12, 2020 was made by Maggard, seconded by Conti and carried.

Machelor: If you haven't 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 preformed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance of the Code to continue the project for a denial to prohibit a project as presented.

Public Hearing Open

The first item on the agenda had been removed.

The next item on the agenda was a request from Sean Edwards, 2510 Upper Mountain Road, SBL# 104.04-1-87, requests for a variance from Section 360-53, Area and dimensional standards, E (2), from the required 15' side yard setback to be 10' to allow for an addition to the residence. The property is presently zoned RR, rural residential.

Machelor: Mr. Edwards would you come up please, state your name and address for the record.

Good evening, I'm Sean Edwards, 2510 Upper Mountain Road, Sanborn, NY 14132.

Machelor: Mr. Edwards, explain what you would like to do.

Edwards: I would like to put a little addition out the back of my house. It's actually a bedroom addition. The problem is the bedroom is very small that I'm adding on to. It's 11' inside

dimension. By the time we meet today's standards with the Building Code I'm going to lose a foot, so it would be a 9' wide bedroom extension going out. My architect looked every which way for another avenue. This is a very costly way for us to go. I have to move the septic system and put a new one in. If there was any other avenue, I would run that way. What we're looking to do is, I think it's the side lot setback of 15' to 10', that would give me another 5' which in turn my room size would grow by 4'. That's basically why we are here this evening.

Machelor: So, you've answered one of the principal questions we ask and that is whether the benefit can be achieved some other way. What you're saying is that you really couldn't do that on the other side and you have to move your infrastructure in order to make this happen.

Edwards: It's going to cost me \$15,000-\$20,000 to replace the septic system. We hired an architect that looked in to every avenue possible and this was the most feasible even though I have to replace the septic system.

Maggard: There is a dip between your property and the property next door, is that true?

Edwards: No.

Maggard: Just a slight dip.

Edwards: The elevation between the two lots, yes.

Maggard: There is a group of pine trees there, are you going up to that dip or not quite?

Edwards: Oh no, I'll be 10' away from it.

Conti: The dip is on the property line?

Edwards: Yes. Any rain water from that addition is going out to the culvert out front.

Machelor: Another thing we always ask is what you're asking substantial? The existing rule is 15' from the property line and you're asking for about a third at 5'. It's certainly less than half.

Maggard: It's not substantial.

Machelor: Joe, any questions?

Conti: No.

Machelor: Gary, Damon? Hearing none I will entertain a motion. Is there anyone else that would like to speak to this?

Public hearing closed.

A motion based on the Board's discussion the following considerations the Zoning Board of Appeals determined that the benefit of the variance to the applicant outweighs any detriment to the health, safety and welfare of the community that the variance request is the minimum necessary and the variance be granted was made by Conti, seconded by DeCastro and carried.

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

The next item on the agenda was a request from Mary Ann Kilmer, 4616 Townline Road, SBL# 90.00-3-32, requests a variance from Section 360-220C (5a) and Section 360-220 C (4b), for a setback from the required 700 feet to 300 feet, and a setback from the required 700' to 650' to allow construction of a utility-scale solar energy system. The property is presently zoned RR, rural residential.

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

Jared Perram, Saturn Power, 393 West Delavan Avenue, Buffalo NY 14212.

Machelor: Why are you here appearing for this project?

Perram: We have a proposed 5-megawatt solar farm on Dan Kilmer's property on the corner of Townline Road and Albright Road. The system is taking up about 30 acres of the property. We are requesting a variance from the right-of-way from 700' on Albright to 300' and from Townline to 650'.

Machelor: We have at least five criteria that we look at to find out what kind of variance we are willing to give to people. One of them is whether there is some other way that you can do this without asking us for that much of a variance.

Perram: We're running in to difficulty like this is as we look to downsize the system itself, the interconnection cost for us doesn't change. The interconnection costs for this project are palpable but they're not great. What will it cost us for utility connections and we're up above that million-dollar mark? Once we start getting there and downsizing the system it becomes a point where the project is no longer financeable and achievable and we effectively have to look to back off. We've been working through this project with Dan for about 1.5 years now. COVID-19 all the things excluded and everything, the moratorium came in to play sort of as we were 90% done with our drawings. We went back to the drawing board, upgraded the panel classes as much as we could with something that is actually feasible for upgrading the wattage, try to shrink that foot print and we found ourselves in a place where we're really at our

ZB 2021-2C

minimum pv foot print, trying to do a bunch of screening and different things like that to try to help accommodate as well.

Machelor: If we said to you just as a throw away, what you're saying is it can't be smaller and still meet your financial criteria.

Perram: Correct.

Machelor: In other words, you are asking for 300', if we said well only ask for 200' you would say no it's 300' or nothing.

Perram: I'm listening obviously to what you were saying to the gentleman prior on the half way mark. If the Board were to say hey you can cut your 700' in half and use 350' I could probably play with that. We're right on the brink of pv foot print size to interconnection ratio.

Machelor: That is the sort of question you have to be ready to answer because it's so important to answer the question. I would just say that one of the reasons that there is 700' setback in the regulations is because the installation of solar farms is an undesirable addition to the neighborhood. In order to make it more palatable we determined that 700' was the minimum that we could allow anybody to put a solar farm on a main road. That is a problem.

Perram: Does that lack of desirability come from an aesthetics place?

Machelor: Aesthetics I suppose is it but as a Zoning Board we just administer. The Town Board decided that was an appropriate amount and that's where we go.

Conti: This is a brand-new law. This law was just redone as of December.

Perram: I've been keeping an eye on it and I saw 750' and it's a big setback in terms of on scale with other municipalities. I appreciate why you have that 700'-750'. I guess I'm in a position to say if it were put in to place to deter folks from building solar farms closer to the road but maybe that 750' does have some wiggle room if we did go ahead and say if it's an aesthetic issue, we're happy to invest a few hundred thousand dollars in screening so that you're not able to see it from the road ways, from the neighbors' homes. I believe to the west of the property is a clay mine. I wouldn't look to interrupt anybody's vision from their porch from there.

Machelor: That is true. I think you should look at it this way too, somebody that lives there didn't know that all of a sudden there is going to be a solar farm there, they are not going to like it anyways so the Board tried to make a compromise and say if we set these far back enough then the neighbors will be more receptive to this. Then when you come before us and

ZB 2021-2D

say well, we set this limit and now we are going to adjust it by more than 50%, that can be a problem.

Conti: The plantings and screenings are part of the Code at 700'. If we granted you a shorter setback and you're saying we will cover it with plantings and screening. That is part of the 700', that's part of the law to begin with. It doesn't matter where you are at, that has to have the screening and plantings to protect the aesthetics of the neighborhood.

Maggard: We're not only looking at the neighbors but we're also looking at the road. You have a road that is, you're asking for a variance from a public road. That is a biggie right there, plus more than a half on the other side, from 700' to 300'. That's a lot of variance.

Perram: I recognize that. I recognize it is a drastic variance to ask for certainly. We do see the benefits of the solar farms. I understand on the aesthetics claiming they are not ideal. There is a level of revenue and things like that they can bring to the Town and you can see them as a benefit. I would love to find a way where we can....if it's over and above some sort of screening plan....there were some additional plantings on the road side itself and along with what we're doing up on the fence line, that's something I would certainly be open in discussing.

Machelor: I would like to think those plantings are like they are done in drawings, but what really happens is it takes years and years to grow out to the point where they actually do what they're supposed to do. It's not as clean cut as you think. This issue is self-created in the sense that you planned this knowing that you were going to have to ask for this substantial amount of variance.

Perram: We procured the land in 2019. We signed a lease with Dan Kilmer in 2019. We've been working on our designs for some time until early 2020 when we planned on addressing the Board and then the lock down and the moratorium. It was never our, we didn't go in to procuring the property saying hey we are going to roll the dice and see if we can get something with the Zoning Board of Appeals. We have so much invested in to this project to this point that we're not going to ask, it just wouldn't make sense to move forward as far as we did.

Machelor: This is a public hearing, thank you. I would like to ask if there is someone else in the room that would like to address this issue? Please come up and state your name and address.

Roberta Kloda, 4584 Townline Road. This solar farm would come around 2 sides of my property. The way I understand the rule is that these regulations were put in place to protect myself, the homeowner and our property. When I look at the drawings that have been submitted for this, one of the drawings shows that on the side there is only 103' that's going to be off the fence line. Where is that ground covering and that tree and those things? One of the things I noticed when I was looking at it was under 5a on the variance, it says a minimum of 700' from any public road. When you get to Albright Road, you're coming off asking for 300',

ZB 2021-2E

that falls under your substantial rule. That is something that we really need to consider as the Town whether that's acceptable for us. The other piece is these rules were put in place in 2020. Why would only 2 months later would we even consider putting a variance on it? These rules were put in place to protect us, to protect all of our property but now 2 months later we are going to say the rules aren't important? To me the rules are important.

Conti: Anyone can put a variance in. We would have to accept it and have a hearing.

Kloda: Understood, but if you put rules in place, it seems like we should follow them and that's what we're here for right? We all decided it was the right thing to do. The closer you get the albatross to my property, the less my property is worth. I would assume all these other people on Townline Road also. It's an eyesore. Nobody wants this in their back yard. The last piece for us under 4b, the rules said a minimum 700' from any dwelling or adjoining lot and 500' from any structure on adjoining lot. This is not going to be 500' from my barn. I have a problem with that. When we measured it out, it's only going to be 340' from my barn.

Machelor: Would you come up here and show us where your property is?

Kloda: We are the property that covers on 2 sides. We are right here (looking at survey) my barn is right here. This is not 500'. That's only 330' from our property. It's going to come around on both sides. They also have it here at 103'. How big is the screening going to be when you only have a 3' buffer to make a screening?

Conti: The 103' I'm assuming we can ask Jared? 103' and then the screening and then the solar panels.

Kloda: It doesn't show how big that is there. My barn is right here and when you walk this off it's not 500'. It might be 500' from the main barn but there's a whole other barn that comes down with the duck fence and everything else. I have animals all through here. They didn't even discuss that when they asked for the variance. They just assumed it would go through. For me, the reason I ask you not to submit this variance is because we may.....they are only 2 months old. I don't think we should change it at this point. Thank you.

Machelor: Is there anyone else that would like to speak to this project?

I'm Herb Meissner: I live across the street from the proposed solar farm on Albright Road. I understand, I don't like to interfere with what land owners want to do with their property but I feel that ordinances are made for the Town for the benefit of those people that live within that Town or within that area especially. I believe that moving from 700' to 300' closer to the road, that's like 700' is close to a 1/8th of a mile away from the road. 300' is 100 yards from the road. That's more than double of what they propose. What it will do, they're very unsightly in the first place and I want to ask another question while it's on my mind, what are the Town

ZB 2021-2F

ordinances for hiding these solar panels? Is there anything that is required of the property owner to hide those solar panels?

Machelor: Yes.

Meissner: Moving it 300' from the road will definitely de-value the property that I have and the house that I live in. I moved to the country, I moved to the Lewiston area, I lived in Wheatfield for many years. I moved to Lewiston about 13 years ago. My son-in-law and I built the house. We built it in a rural area so that we could enjoy the rural type of life, which we still will but those panels will be such eye sores for us when we sit on our front porch looking across the field that should be open. That's no longer going to happen if they're moved within 300' of the road. I'm am opposed to this. I appreciate owner's rights to use their land the way they do as long as they are listening to the Town Ordinances of rural farming area, unless they changed it to commercial area I would guess would have to happen. I'm against moving it closer to the road.

Machelor: Thank you. The public hearing is still open. Would anyone else like to speak?

Charlotte Booth, 4611 Townline Road. I'm just across the street from the proposed farm. We just moved to the property in October of 2020. I would say that if this solar farm was there, we would not have bought this property. It's a concern to us. We just moved in. We are in the Town of Cambria. We are at the Board meetings quite often so we hear of the Bear Ridge solar project that's going on there and all the opposition to that. I share the same sentiment. I hate to have any opposition to what someone wants to do with their own land. However, this is a big one. I have safety concerns for my family. Bear Ridge often talks about fire issues if there were to ever god forbid be a fire at this property. Your animals, my family would be at great risk and that's a big concern for me. The property value of the house that we just bought would immensely go down. I have some questions just about the screenings and that type of thing. I don't know if anyone can explain to me what the procedure for the screening is, what is required?

Seaman: Let me explain. Today we are in front of the Zoning Board of Appeals just to consider this application to change the setbacks. The rest of the process for a utility solar would require the applicant to go to the Planning Board. The Planning Board will consider this at a later date, they would consider it in terms of a Site Plan Review and a Special Use Permit. The entire law addresses a lot of those things. A significant portion which is the screening. The screening conversation would come before the Planning Board at a different date.

Booth: I appreciate that. We are in Cambria, it's a whole different world over there. Those are my concerns, the safety of my family, the value of my property that we just moved in to and honestly being in Cambria if my concerns are worth anything.

ZB 2021-2G

Machelor: Yes, ma'am it certainly is.

Booth: I appreciate it because we don't get very much over there. Those are my concerns. Thank you for clarifying that it would be a different Board's discussion for my other questions. I'm in opposition of the re-zoning.

Conti: Mrs. Kloda, can you come up here one second? I just pulled up google earth. I want to take a look at something. On google earth and I don't know how old this picture is, is that the barns you are talking about?

Kloda: Yes, right there.

Conti: You're saying from where.....thank you.

Susan Mielke, 4552 Townline Road. My property would butt up to the farm on the back. My question is page 17, I don't know where it is on your property but it says that you've already put a variance in where it's supposed to be 200' off the back of my property? It's 100' already. I was never notified of this. I was never asked if that could go through. I was never questioned is it okay if we give them a variance to go from 200' on the back?

Seaman: I believe that was a typographical error. The requirement is 100'. I think when the application came through it listed that they needed 200' but they didn't so. There was not a previous application for a variance on this. There was an adjustment to the application itself. They said you need 100' setback from another property. The application indicated that they needed 200' but they don't. The law requires 100' from another property, so that's where the adjustment came in. It's not that the applicant already got an area variance on this.

Conti: On our sheets that was already scratched off before we got it. The law states 100'.

Mielke: I'm opposed to the solar farm. Not to mention what it's doing to their property and the back of my property and you take 28 acres and you put a chain link fence around it and there goes any chance of wild life that would come in to your area. It's a big eyesore and what do you do in 20 years that they say these are no longer good. Who is going to come in and clean that up? Then the land is shot. There is nothing you can do to that land afterwards. That was my question about the 100' to 200' and I'm definitely opposed to this going up.

Machelor: Thank you ma'am. Anyone else?

Dan Kilmer, 4616 Townline Road. It's where the project is going to be. I respect people's opinion of unsightliness and that it affects their property but the Zoning Board has a responsibility to actually approve things that are out, laws that have changed and we are requesting something that is out of the law. This law is only 2 months old. Before it was 200'

setback. This could have been built without any Zoning Board of Appeals approval. We find ourselves in the middle of something here. A project that was started well in advance. This is not something they're asking a variance for since this law. They put a moratorium in right as this application was going in. Then we had to wait for the moratorium. Due to COVID-19 and other situations I was not made aware of the actual public hearing on the law change or I would have been here and I would have spoke in opposition to it because as the one gentleman said land ownership is land ownership. A 700' setback or 200' setback it's going to be unsightly either way if it's built and it will be built either way. Your sightly issue goes away. It's going to be built whether it's 700' or 200'. You're coming down the hill you will see it. The neighbors are going to see it. There is nothing in front of it. I respect people's opinion. As for the safety issue, you can build houses there and they can all burn too. We can always have a hypothetical on not to do something. All I'm asking you to consider, your job as the Zoning Board is to consider things that possibly change, this application had already started, soil samples were done, there was money spent, compromise. He's not looking for 2, but he's looking to move off the 7, maybe the Board should think about a number that will compromise. It's still going to be built. It's still going to be in your back yard. What is the compromise? Thank you.

Machelor: As far as the compromising concern, we have to deal with what was presented to us, not hypotheticals of what it could be. That would be up to you.....

Kilmer: I don't believe it's going to be unsightly. If I thought corn was unsightly, the whole agriculture area would be unsightly to me. Unsightly is in the eye of the beholder. There are 8 people opposed. The people that really don't care are at home because they really don't mind either way.

Conti: That is not necessarily true. We can only go by what's here and we also have to go by the laws. The law states, it doesn't matter when you started the project, when you applied for the variance the law is the law that we just put in the books 1.5 months ago. It states 700' and that's what we're looking at. We're not looking at what it used to be. We are looking at what it is today. We know our job; we know what the law is.

Kilmer: I sat in your seat for 6 years.

Conti: That's good but now we're here. We also know that we have to follow the Zoning Board of Appeals Code which states that we are here to follow the law. We're not here to make a ton of changes to that law to make sure that everybody is happy when they bought the house in a certain spot or area. We compromise, we work with people all the time as you saw with the last person. That is never an issue. The issue here is that this law just went in to the books 1.5 months ago. It was well advertised to the Sentinel, Gazette that they had their meetings. It was put out that they went to 700' along with other different changes. That is what is in front of us today. We take in everybody's consideration including yours and everybody that is here to make our decision along with the law.

ZB 2021-21

Kilmer: I didn't mean to be disrespectful. The reason you exist is to actually violate, to give approval to violate the law.

Conti: The Zoning Board of Appeals exists to make sure the law is upheld. People can apply for variances and we can try to work with them to accept or deny them, but our job is not to just let the law go and let the people do what they want to do. We are here to make sure that everybody, the Zoning Board was set up so that the way the Town's Master Plan is setup we try to uphold that the best we could. We're not here to just give away the farm.

Kilmer: I'm just trying to explain we are here asking for something that's not allowed by the new law but there is extenuating circumstances that this project was started long in advance of the change. A lot of the hype of the solar farms is just hitting us now. If you look at the future, this is going to be an issue in the future to deal with. I'm just asking that you consider a compromise.

Machelor: There has to be a time when the government issues a regulation or a law and puts a particular date on it, it has to mean something. You could say that about any law any time, if it only was this or if it was only that but it isn't. It's what it is right today.

Conti: I got caught speeding down the road doing 45, well it was 55 a month ago. It doesn't matter what a month ago was. It matters what today is when I got caught.

Kilmer: You didn't expend any money a month ago. If you planned a mansion and spent all your money on engineering and development and then they changed it and put a ranch there.....

Conti: As soon as the moratorium went in and you knew the Board was going to go over and changing the law, at that point you should have been at the meetings and made sure that you kept in touch with them to find out where they are going.

Kilmer: There was no meetings. When I contacted the Supervisor of the Town, he's not here to defend himself but I contacted him and said I would like to be in the loop when the moratorium gets talked about and a public hearing to change the law. It's my mother's property. She received no notification. I don't know why during COVID-19 in the time when you shut down all public hearings and all of a sudden you open up and the first thing through is this one. It's kind of hard to stay on top of it. It really is. I thought maybe a mailing of when you were having the public hearing on solar panels. That's here no there. The law is passed. I'm just here to ask you guys to consider this is a unique situation where an application was in, started, money spent.....

Conti: Was the application placed with the Town prior to the moratorium?

ZB 2021-2J

Kilmer: I believe they came to the Town Board in 2019.

Conti: Was an application actually put in?

Kilmer: The company did that.

Perram: No.

Kilmer: I know there was work done, core samples, delineation.....

Conti: I want to know if there was an actual application put in prior to the moratorium going in? He says no.

Maggard: He explained the entire thing to us, what they did, how they did it, the whole bit. After that many weeks after that they had a public hearing. That's where this law got developed from the public hearing that they had after these guys did their little dog and pony show.

Kilmer: The process had started. They did soil samples, wetland delineations. This isn't something that they started after the law was created. This was well.....there is a lot of work done before it gets to this point.

Conti: We have to go with the law today. I can't go by well here is what we had before.....I have to look at what we have in front of us today.

Kilmer: I'm asking you to consider that.

Conti: Absolutely, everything is under consideration. You say it's your mom's house. Do you live there also?

Kilmer: She is blind so I take care of her.

Conti: Do you live there too?

Kilmer: I live on Grand Island. I take care of her. She can't drive.

Machelor: Thank you. Anyone else want to speak to this?

Mielke: He's talking about he can take this property and sell it and people could build houses all over it and the houses could all catch on fire too. There is a big difference. If that house over there starts on fire, we don't have to evacuate a 5-mile radius around where that fire is. Houses burn, but you don't have to evacuate in a 5-mile radius of that house. You don't have

ZB 2021-2K

to have special chemicals to put it out. He's saying I could put houses there and they could burn too. This is a huge difference. 10,000 volts of electricity out there killing the land that's never going to be used for anything else. They have animals, I have animals. Are we supposed to grab our animals and run 5 miles from my house if something starts on fire? There are other solar panels. The one over on Lockport Road but it's so far back from the road you can't see it and there's nothing around it. They're asking to put this right in our back yard where our animals are. My pasture for my animals actually goes to the back of my lot line. There would be like 100' between my horses would be where it is. And theirs too. It's all fenced in back there for our horses and now you are wanting to destroy that section of the land.

Conti: I sympathize with that but the only thing that's in front of us is going from 700' to 300' on the Albright Road and from 700' to 650' on the Townline side. The actual end part of your property where your animals are to where that solar panel is, is actually legal. That part there is not in front of us.

Mielke: I just wanted to address the houses burning versus the solar panels starting on fire. It's a huge difference.

Kloda: On mine, they didn't apply for the variance to get that close to my barn. I just want to make that clear. They didn't ask to come that close to my property but that's what their drawings and their maps and everything show out there. Thought would have to be a separate variance or I don't know how they would do that because they are only 340' as opposed to the 500' that the regulations say. I really would like you to consider that. They're probably not even 700' from our house either.

Conti: Your land goes back 1,272' total? Your house is in the front so without measuring it, it probably is close to 500' to that side one, to the back one obviously there is more than enough.

Kloda: We did try to get discussions going on this. We went on-line and we pulled these regulations. The regulations that are on-line for all these Codes that were referenced are incorrect. I didn't find that out until 4:10 today when I called and said I'm not understanding how these all play together. Sandy was there and said are you looking at the regulations that are on-line for the Town of Lewiston? I said yes, she said they are wrong. These have been changed for 2 months and none of us could even cross-reference to do the research on it. They were never posted. She was nice enough to send it to me so we could at least understand what the Codes and what we were being asked to accept a variance on. We didn't even understand it until the last 2 hours.

Seaman: You are right, when you look at the Town Code Section on the website it brings you to the old law. That is confusing, I understand that. There is a Section on the front of the website that has I think it's currently called proposed law.

ZB 2021-2L

Kloda: It's very difficult.

Seaman: I understand that. If I can address for a moment your issues with regard to the requirement of the setback from your barn and potentially your house as well. For today what is in front of the Zoning Board of Appeals is two requests for the 2 setbacks relative to the 2 roads. I would say that the Town Zoning Board should go ahead and make a determination and take a motion on those particular things. As I mentioned earlier this is the beginning of a multi, several month process frankly, in front of the Planning Board for several other requirements that any utility scale solar would require. Within that period of time after this, they're not going to be able to contemplate whether or not there is 700' from your house or 500' from the barn today. That's not in front of them. That wasn't flagged anywhere by the Building Inspector or the Building Office. If that is an issue and you guys actually measure that out, make sure you bring that to the Town's attention. Depending on how this process goes maybe they end up coming back again for a different application. Does that make sense? The Zoning Board for tonight will need to make a determination for the application relative to the 2 roads only and then see how the process plays out after that. They might have to come back if in fact they are too close to the other setbacks.

Kloda: I just want to make it very clear that I oppose this and I don't want to give up that extra 50' that would be on the Townline side of the road. I don't have property on Albright but I'm against that too because I feel bad for those people under how you spoke earlier it would be significant because it's more than 50% and I think that would be horrible that they would have to give up that much.

Machelor: Thank you. We are still under public hearing. Does anyone else want to speak on this issue?

Public hearing closed.

Machelor: Gary do you have any questions?

Heuck: No questions but there are some substantial problems with the footprint.

Machelor: Why don't you state what they are.

Heuck: On the setback especially for Albright it's greater than 50%, it's only 300 and some odd where they want almost a 400' variance. On the Kloda residence for the barn, it looks like, I looked at my phone for the geo.....it's pretty close to the borderline....

Conti: We're not looking at that tonight anyways. That's not in front of us tonight. We are only talking about the 2 setbacks, the Albright Road setback. You're talking about the house and barn. We can't really do that.

ZB 2021-2M

Seaman: Gary, what we are going to do is the first time that the barn and the house issue was raised was during the public discussion tonight. It wasn't part of the application. They didn't apply for an application for a variance based on that. If in fact that barn and house are too close to the desired setbacks the applicant will have to apply again for those variances. For tonight you guys are just going to consider the 2 roads.

Heuck: We were indicated on our sheets that we should take a look at any adjoining lots, buildings or dwellings that were.....

Conti: You are referring to the law but that's the variance that's in front of us is. We can't really look at that.

Machelor: It's because we don't have official measurements.

Conti: And it's not in front of us.

Machelor: Afterwards it would be caught and fixed by the Building Dept.

DeCastro: I just want to ask what is currently on the property? Is it rural vacant land except for the dwelling?

Kilmer: Fillable property.

DeCastro: I just want to get a feel for the character of the property and the neighborhood surrounding. The Klodas, you have a farm out there with?

Kloda: We have horses, ponies, ducks, rabbits, everybody drops off their cats there. The animals from Bonds Lake come down. The deer come and eat whatever the horses don't eat. My daughter and I both compete all up and down the east coast with our horses.

DeCastro: You breed them, animal husbandry?

Kloda: Yes.

DeCastro: Mrs. Mielke what is on your land? Is it a farm, just a house?

Mielke: There is a horse barn, right now I have goats and donkeys on it. Probably 17 acres of it is hay field and then there is another 3 acres of a pasture that goes out to the east of my property where the animals graze at and eat.

Kloda: We have a pond in the back corner of our property where a lot of times during the summer, that's where we hang out. We have parties. It sits on a half-acre of the property line.

ZB 2021-2N

Machelor: Thank you. Marge?

DeCastro: Across the street is it just a house or is it also....

Booth: We have about 2.5 acres, 2 houses, a work shop and then around that is about 30 acres of farm.

DeCastro: I just wanted to clarify that it seems like it is animal husbandry, farmland and the plan that is proposed would make it semi-industrialized.

Maggard: I think that this is very substantial going from 700' to 300' on a public road or near a public road. Also, I believe it was 300 some odd feet from a public structure, a dwelling rather than 500'. That's not substantial but I believe in this case it could be. That's what I have to say.

Machelor: The public hearing is closed so now we have to decide what to do.

A motion based on the Boards discussion and the following considerations that we all discussed, the undesirable change to the neighborhood due to the close proximity to the road that the benefit can be achieved by following the newly formed Code. The variance request is extremely substantial at approximately 58% of the Code from 700' to 300'. The proposed variance will have an adverse effect on the neighborhood due to as we just talked about the different farms and such. This variance is self-created due to the fact that a solar farm is something that the owner wants and can do within the new Town Code without any variances. The Zoning Board of Appeals determined that the detriment to the health, safety and welfare to community outweighs the benefit of the variance due to the applicant and the variance is denied was made by Conti, seconded by DeCastro and carried denying the application.

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

Machelor: Thank you.

The next meeting will be March 11, 2021, at 6:30 P.M.

A motion to adjourn was made by Heuck, seconded by DeCastro 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 February 11, 2021, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Carl & Cara Turner, 423 Harper Drive, SBL# 101.06-1-8, requests a variance from Section 360-38, B, yards required from the required 15' side yard setback to 5' to allow for a garage addition. The property is presently zoned R-1, one family residential.

Sean Edwards, 2510 Upper Mountain Road, SBL# 104.04-1-87, requests a variance from Section 360-53, Area and dimensional standards, E (2), from the required 15' side yard setback to be 10' to allow for an addition to the residence. The property is presently zoned RR, rural residential.

Mary Ann Kilmer, 4616 Townline Road, SBL# 90.00-3-32, requests a variance from Section 360-220 C (5a) and Section 360-220 C (4b), for a setback from the required 700 feet to 300 feet, and a setback from the required 700 feet to 650 feet to allow construction of a utility-scale solar energy system. The property is presently zoned RR, rural 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
#N279467

2/4/2021