

ZONING BOARD OF APPEALS
Town of Lewiston 1375 Ridge Road
Lewiston, New York 14092
Thursday – February 9, 2023

Present: Conti, Heuck, Machelor, Maggard, Warnick

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

A motion to approve the minutes of November 10, 2022, was made by Joseph Conti, seconded by Gary Heuck and carried.

Machelor all in favor say Aye

Members: Aye

Machelor: Opposed none approved

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented.

Machelor: First item on the agenda tonight is a variance request Pasquale 439 Kenwood Drive SBL 87.18-2-58 someone here on this?

The owner Clemente Pasquale and myself Dave Giusiana architect

Machelor: Tell us about you project what you want to do

Giusiana: Realities of life has daughter and son in law and their grandchildren who are moving back in with them and they need more space. So, they want to set up the house current design trend 2 masters needs another master bedroom bath and closet. We should put it on the east side of the building the house itself. Abiding by the 15' side yard set back will only allow a 9' and change for a 4' wide addition which really wouldn't be adequate to meet the minimal bedroom size so we are looking to go much further than that. Again, this would be in addition to the to the service of the master bedroom master suite. The hardship in this situation is the house residing where it is the set backs are what they are it is under the town guide lines a substandard lot. Like all of the lots on that street only 115' deep versus the town standard being 150'. With the house size to really no other place to put it, there's already an addition

ZB-2023-2A

put on the west side for a garage and then on the rear the way the rooms lay out living room, bedrooms, bathroom and windows prohibit an addition on the back. So, this is really the least impactful addition that we can propose.

Machelor: Of course, David you know that he was given a variance request on the other side

Giusiana: Correct

Machelor: And that was fairly large there's only 5' from the property line on that side and you're asking for that same 5' on this side.

Giusiana: We can certainly talk about something less than the 5' we just can't abide the full 15' and that the 9' addition is not going to work

Machelor: Anyway, you know David its not our responsibility to say the size is too big or why does it have to be that large and all those things. Our issue is for one the safety. That there should be a path on each side of the house for truck or fire truck or anything to get behind there and that going to prevent that. It certainly can not go on the other side because there is no room there and then there is a fence. So, it doesn't look good. Questions from the board?

Conti: How big is the house now? Master bedroom, baths

Pasquale/Giusiana: current about 1700 sq feet

Conti: how many bathrooms

Giusiana: 3 bedrooms and a bath and a half

Conti: Do you know the size of the house that's on there now as far as to what's allowed in town code?

Machelor: footprint

Giusiana: we would meet the maximum area coverage even with this addition

Conti: will still have it

Machelor: What is it

Giusiana: 35%

Conti: He would still be ok with that

Giusiana: Yes

Heuck/Maggard: too Close

Machelor: Marge

Maggard: How would you be able to get any equipment in the back of your home in the back of your home if you were to go with that big of a house? With only allowing 5 more feet on both sides.

Giusiana: It will still be adequate enough to get lawnmowers and stuff to go around. The house on east side is better than 10 feet from their property line.

Conti: Which we can't count on that we can only discuss this property.

Giusiana: Correct

Maggard: I believe it will be too close in order to be safe because you wouldn't be able to get any equipment back there except for a small lawnmower.

Giusiana: If we brought it say 10' instead of 5' we can still do that

Maggard: Have you considered going up?

Giusiana: The age of the residence and his current health and the whole idea of putting a master second floor just wouldn't make sense for his situation.

Maggard: Thank you!

Conti: No rafter on the back of the house why can't you put the whole addition back there?

Giusiana: The one section in the middle of the back is a large great room has nothing but windows to the back yard so that would really prevent that room from having natural light and ventilation as well as the view.

Conti: But even if you stay to the 15' on the side and just went back a little further to the back part. Your asking questions so

Giusiana: 9'4 is part of the addition it would be a room that's less than 9 feet wide we need at least

ZB-2023-2C

Conti: But talking about master bedroom master bath and walk in closet why couldn't the walk in closet be on the side where you are within that and put the main part of the master bedroom in the back.

Giusiana: It's part of the way it lays out relative to the existing plan the location of the existing bath and the plumbing adjacent it makes sense to put the master bath in sorta crotch of the existing house and then put the mater bedroom on the east side we have minimal room we need would be 15 feet. 10 feet we could make that work

Heuck: Dave, what about over the garage

Giusiana: Again, the whole thing about a second floor I mean Mr. Pasquale himself his health wouldn't allow him to have a second-floor master. And I think also with keeping in the charter of neighborhood of the houses a lot of the houses are ranches or story and a half house.

Conti: But they also have a majority of the set side setbacks. I mean the idea of have the side setbacks in the Town of Lewiston is to keep it from looking like city lots where everyone is a couple feet from the lot line. He's already 5 feet from the one side and now he wants to take up almost the whole width of that lot.

Giusiana: We actually did do a whole overlay of that neighborhood. No one in that neighborhood meets the current zoning

Conti: But they're not 5 feet inches from the property line

Giusiana: Your right. So that's the bigger question willing to produce that request

Machelor: We have this balancing test you've heard it hundred times

Giusiana: Yes

Machelor: Can this benefit be achieved some other way? It obviously can its imagination on your part and owner on how to rearrange things, where their bathrooms going to be and so on. Second one is undesirable change in neighborhood. It is an undesirable change in the neighborhood to have a house taking up the whole lot that's it on except for 5 feet. Its substantial they're asking for 2/3's more than your allowed that's more than 50% that's substantial. It will have physical and environmental effects. If you just want to call the fire Department an environmental effect or physical effect. Its self-created in the sense that you don't have to do it.

Giusiana: I had this debate before every single request every, single request is self-created.

ZB-2023-2D

Machelor: That's right. But that's not true there are many requests that come here that aren't self-created somebody else doing something different has created situation where the petitioner has a... whatever to say this isn't my fault I didn't do this but in this case it is. But we have people come here all the time that are

Giusiana: 100% of this neighborhood was build substandard lots that part of the hardship. Norm its absolutely part of the hardship and secondarily the house was sited where the house was sited. Which again he bought the house as it was.

Machelor: That's right but he's the one asking to expand it

Conti: And he's at 1700 square feet which is a pretty good side house on that street. And for a ranch house on that street, especially on that lot it's a pretty good size house. So, he wants to add how many square feet?

Giusiana: 400 all in

Conti: So, you got 2100 square feet on a substandard lot is an extreme amount of living space

Maggard: Why do you say this is a substandard lot?

Giusiana: Doesn't meet the minimal requirements for depth town standard 75x150 is the minimal town standard for a lot, this lot is only 116 and change deep.

Maggard: 100 foot

Conti: 116.64 foot deep

Maggard: Yeah

Conti: It's 116.64 inches deep

Machelor: Its less deep that's what he's saying

Maggard: Oh, substandard deep

Machelor: But the depth is not preventing from building in the back

Giusiana: No

Machelor: As opposed to building on the side

ZB-2023-2E

Giusiana: Correct

Machelor: So, if I was you, I would come back with another plan. And I am not even sure if the 35% is covered. I think if we did some close measurements, we might find out your also over the 35% limit. It looks like you are.

Giusiana: I will verify that

Machelor: It's not the issue

Giusiana: Tim did ask when I first

Machelor: That's not really the issue here today because so far, we are just talking about side lot variance.

Giusiana: Your suggestion about coming up with a different plan and coming back is there any conversation about any distance of variance at all?

Heuck: I think he would have to take it up with code enforcement

Machelor: Gary, Questions?

Heuck: No. No questions at this time

Serianni/Giusiana/ members all talking

Machelor: Does anyone else want to speak on this issue?

Public: I do

Machelor: Come up to the microphone please

Linda Carlson:

My name is Linda Carlson and I have lived at 435 Kenwood Drive for the past 37 years with my husband, John until he passed away on Oct. 4, 2022. I received a revised courtesy notice of public hearing on Monday February 6th. As you know Clemente has submitted an application requesting area variance yards required 15 side yard setback to 5 feet to allow for an addition. And your also aware of the other variance that he applied for that the Zoning board approved. I think that was about 6 or 7 years ago. When that hearing came up my husband and I received a Courtesy notice for the public hearing the day before the hearing. I called the town hall to inquire if the hearing could be postponed because we had numerous concerns and we were not in favor of the encroachment on our property. We verbally stated our concerns. We also had a

ZB-2023-2F

conversation with a reputable real estate broker. Who mentioned when and if the time comes that we want to sell our home, the 5' setback would impact the sale. A side yard variance would not be approved to add an addition to enlarge our bedrooms. They would have to go out towards the back or add a second floor for a master suite. I have down loaded pictures of 439 Kenwood Drive from Realtor.com and the Niagara County Oars property search that shows what the property looked like when purchased by Lori Clemente in January 2013. I have also downloaded a picture of only the front of the property before the new addition was completed. Upon reviewing the online searches before and after the first addition 439 Kenwood Drive is listed as a 960 sq feet ranch, wood wall construction, 2 bedrooms, 1 bath, no central air condition and no detached storage shed. The addition was completed about a year after it the start. The home now has a master suite with attached bath, hook up for laundry on the first floor, larger living room making it a 3 bedroom, at least 2 full baths yet the square footage still remains at 960 sq ft. Who in the Town is responsible for correcting this discrepancy. And if the Zoning Board approved this second variance, I am sure it is again going to add additional square footage 439 Kenwood Drive. Modern, states what's acceptable and what's not acceptable in their recycling calendar. In reading the construction and demolition services it states dumpsters and portable toilets are available on demand and on time. The Pasquale's did not secure either for the first addition. The construction debris from the initial addition resulted in mounds of garbage put out front every Sunday for Modern to pick up on Monday. Including large boxes, toilets, laundry tubs, wood beams with nails and black garbage bags with unknown contents in addition to their normal garbage and recycling. And I believe that Modern has guidelines as to what can be put out to your garbage. Nails in the roadway resulted in two residents getting flat tires on their vehicles. Would also like it noted that my husband spoke to one of the construction workers on three separate occasions explaining urinating in public is illegal. It didn't seem to phase him. We made a call to LPD. On another occasion from returning from one of our vacations we discovered numerous items of their junk and garbage was piles up on our property against the back of our shed without our permission. I took pictures and asked the Pasquale's to please remove. Also, please not that two blueberry bushes that we purchased on one of our trips to Maine were destroyed at this time. Also, the Pasquale's increased the grade level causing occasional runoff that I believe that Mr. Masters is aware of. Also, the Clements daughter, son-in-law and two grandsons sold their home in Arizona to move back to Lewiston. It is my understanding they made a substantial gain when the property was sold I don't understand why they can't find a home in Lewiston suitable for their family. I feel if the zoning board approved this second side variance the property at 443 Kenwood Drive owned by Bonnie Gaines would not be able to put an addition on the west side of their property. A perspective buyer would not be able to enlarge the existing single car garage to a two-car garage or add a car port or some other addition, they would have to request a variance in the back. I want to thank you for giving me the opportunity to express my concerns and I am hoping the Town Zoning and Building Dept will take all this into consideration before approving or denying the request.

ZB-2023-2G

Machelor: Thank you Ma'am we can have that copied and up in the record. Anyone want to speak to this? I would like to make a motion

Conti: Close the meeting first

Machelor: I would like to close the public hearing.

Machelor: All those in favor of closing the public hearing say AYE

Members: AYE

Machelor: I would like to make a Motion of Denial. For the reason I said earlier that I think that there is another means that this applicant can achieve his desire. That it will change the neighborhood charter, that the request is substantial, that it will have an environmental and physical effects and it is self-created.

Heuck: Second

Machelor: We have a motion made in the second any further discussion by the board. I will call the question? All in favor say Aye

Members: Aye

Machelor: Nay any Nay's Lisa call the Board please

Joseph Conti: Aye

Gary Heuck: Aye

Norman Machelor: Aye

Marjorie Maggard: Aye

David Warnick: Aye

Machelor: Thank you!

Machelor: Second request is Barr 586 Oak Run Drive SBL 87.19-3-65 Someone here for this? State your name and address

Barr: Paul Barr 700 Oxbow Lane Lewiston

Machelor: Ok. Describe what you would like to do

Barr: We are building a home as described on Oak Run with Glenn Andrews designed by Architecture Dave Sutton. We are requesting setback on each side from 15 to 8 1/2' not on the

ZB-2023-2H

entire house only the front. If you are aware how these lots are shaped like a pie shaped lot so we are only going to be encroaching on the sides in the very front of the home not all the way back.

Maggard: Could I ask why you would have this drawn up at this size?

Barr: Yes, previously when we had this house drawn, we had expected to be able to purchase half of the lot next door from our neighbor. It was understood that was going to happen and we had the house drawn expecting to be able to put this house in the middle of a lot and half. After we invested in the drawings and made the plans our neighbor Michele reconsidered changes her mind about selling half that lot. So, the drawings were made paid for we invested in this and that.

Machelor: Anyone else have any questions with the Owner

Warnick: I want to ask one question. So, it's a pie shaped lot so how much space do you have on the rear side to push the house back.

Barr: It's important to know that the backyard that we have we can't go very far back because behind us is all wetlands. So, it interferes with our ability to go back or otherwise we wouldn't have any backyard. We can't do anything several feet behind us the wetlands are an important factor.

Warnick: The wetland are drawn on your drawing the way that they are. That little bit

Conti: Was there any discussion as far as buying 10/20 feet

Barr: There was and that was also denied my architecture and builder. We share the same architecture and builder. Both Glenn Andrews and Dave Sutton are in support of the house they both agree that its going to be a nice house. It will complement the neighborhood there was talk with the builder I believe it was here say but my understanding is that there was talk between Michele and the builder about me buying an additional 20 feet that we would need. She had thought that she would do that and then reconsidered back.

Machelor: Thank you!

Conti: Any other questions

Machelor: Thank you! Would you like to speak to this

Michele Gentilicci: I currently live 636 Chicora her in Lewiston. I own the adjacent property on the north side. So, Paul and I did have a conversation March/ April of this year (2022) about my

ZB-2023-21

potentially selling him half of I own lots 19 and 20 so half of 19. I was very clear to Paul at that time that if any sale was contingent on the way the houses were sited. I was right up front with him from the beginning. He sent me a couple different iterations and honestly it looked extreme to me. So, I told him I would not sell the property. That was back in June of last year. So, his drawing were not complete they were not stamped he has changed them since then. To make it sound like they were locked in when I told him no. I told him no 8 months ago. So, in November Glenn came to me and asked me if I would sell 20 feet. He said there was some mix up between Paul and Dave and that the house would encroach into the easement. I never told Glenn that I would do that I told him I would think about I thought about it overnight. Sent me another iteration of Paul's drawing and the next morning I called Glenn the next day and said I am really not interested in doing this. I don't want to start shaving little pieces of my lot off. What if something changes for me and I need to sell that property now I got this substandard lot that I would be able to sell. So, I have my own reasons for not going ahead with the sale but please don't misunderstand that this was any kind of last-minute situation. Again, I've got an email that I sent to my financial advisor in June of last year saying I notified them.

Machelor: Yes, Ma'am I want say you don't have to justify your actions

Gentilicci: I don't want to be perceived as someone who put him in this position

Machelor: No Ma'am we understand that and thank you

Conti: Now you have 2 lots 19/20 you said

Gentilicci: Yes

Conti: Are you building a house on either one of them

Gentilicci: I am planning on well I'm trying to merge the lots right now I have the paperwork into Lockport. I did that last year I will eventually build.

Conti: So, you're going to build one house on the two lots. So, your going to kind of center it and just have a large area

Gentilicci: I haven't really decided Glenn sited it in the center so we will see where we end up

Conti: It's going to be combined into one lot in other words.

Gentilicci: Yes. That's in Lockport right now awaiting approval

Machelor: Any questions

ZB-2023-2J

Maggard: No, I have none

Machelor: Ok thank you

Gentilicci: By the way I wasn't notified of this hearing

Machelor: Notice went to Oak Run address

Gentilicci: That explains it

Machelor: I would like to close the public meeting. Now we would like the board to consider

Conti: I would like to make a motion. Based on the boards discussion and the following consideration that the benefits of the applicant achieve really cant be made up by other means. That the grant in the variance will not produce and undesired change in the neighborhood character of the neighborhood. That the variance is not substantial its only taking up a small portion of the house. That will not be any adverse physical/environmental effects of the district/neighborhood. And it is self-created but that's... So based on that there. The ZBA determines the benefit of the variance to the applicant outweighs any detrimental health safety welfare of the community that the variance requests has minimal necessary and the variance be granted.

Heuck: Second that motion

Machelor: We have a motion made in the second

Warnick: I have a question I understand the wetland back there

Conti: We have to reopen the meeting to do that

Warnick: Disregard

Conti: We can reopen the meeting

Warnick: Reopen the meeting. The only question I have is you've got this proposed pool and you've got 5' back there if you slid the house further back there would be less of a variance

Barr: I am not understanding

Warnick: Ok So you've got you house is how ever close it is to the street here if you slid it back

ZB-2023-2-K

Barr: My understanding based on the architect is explaining to me he's squeezed every bit of the yard and the house can't go back any further than it would without eliminating the pool or imposing on the wetland. We've gone over every option.

Warnick: You could move your pool to the left and back and slid your house back you wouldn't be in the wetlands at all as I am looking at this obviously, I don't have the full details.

Maggard: To Barr you can come up here and see it on the map and see what he's talking about

Warnick/Barr: Discussion

Barr: My understanding is we can't go past that's as far back as we can go
2 kinds of wetland semi circular one is as far back as were allowed to put anything the other line two levels of wetland

Maggard: What is this and this what are they?

Barr: I see the back is a master bedroom and the front will be a guest room or an office both and on this side is part of the garage

Maggard: So you couldn't take it on little bit on both sides

Barr: The architect explained to me making an angle house like he already has it steps having an angle house is not appealing

Maggard: Ok I gotcha I thought maybe it was just a garage or something

Machelor: So is the public hearing open now. No, it's been closed. So, Close the public hearing.

Gentilicci: Excuse me I just have a quick

Machelor: Ok we will open the public hearing again

Gentilicci: You talked earlier when the other gentlemen was here about 35% of the lot being covered by the house how does this

Conti: That's not in front of us that would have something to do with the architect and building inspector and stuff

Gentilicci: Just curious I have never heard of that

Conti: You have to leave so much green space when you build a house

ZB-2023-2L

Machelor: Ok so we are going to close the public meeting again and we have a motion on the floor and made in the second and we did all that. I would like to call the question all in favor say AYE

Members: AYE

Machelor: Opposed hearing none

Motion is passed

All the Board Lisa

Joseph Conti: AYE

Gary Heuck: AYE

Norman Machelor: AYE

Marjorie Maggard: AYE

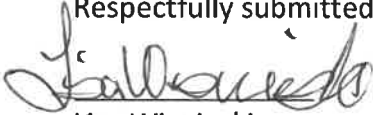
David Warnick: AYE

Machelor: Thank you! Motions passed

Heuck: Motion to close

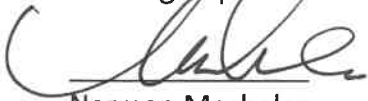
Warnick: Second

Respectfully submitted by:



Lisa Wisnieski

Building Dept Clerk



Norman Machelor

Chairman

LEGAL NOTICE

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 Thursday February 9, 2023, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:
Clemente Pasquale, 439 Kenwood Drive, Lewiston NY 14092 SBL87.18-2-58 requests an area variance, § 360-38 (B) Yards required, from the required 15' side yard setback to 5' to allow for an addition.

Paul Barr, 586 Oak Run, Lewiston NY 14092 SBL 87.19-3-65 requests an area variance, § 360-38 (B) Yards required, from the required 15' side yard setback to 8'8" to allow construction of a new home.

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

Tribune/Sentinel
February 3, 2023