

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York  
Thursday – June 9, 2022  
ZB 2022-6

Present: Conti, DeCastro, Heuck, Maggard, Roemer

Absent: Machelor

Presiding: Joe Conti

Conti: I would like to welcome everyone to the Zoning Board of Appeals. I would like to appoint Damon DeCastro as a voting member and substitute today. 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.

**A motion to approve the minutes of May 2022 was made by Maggard, seconded by Heuck and carried.**

**1 Abstention**

The first item on the agenda was a request from Charles Corio, 2749 Upper Mountain Road, SBL# 104.00-2-63, for a variance from Section 360-185E, Accessory uses and structures, from the maximum height of 18' to 21' to allow construction of a 40'x40' garage. The property is presently zoned RR, rural residential.

Charles Corio, 2749 Upper Mountain Road. I want to put up a 40'x40' post framed barn. I'm looking for a variance from 18' to 21'.

Conti: Any questions from the Board on this?

Maggard: Why did you want to go from 18' to 21'?

Corio: Because of the size of the building. I exceed 18', with a 14' eve, and with 40' I cannot achieve 18'.

Maggard: What are you going to use this building for?

Corio: For storage of agricultural equipment, tractors and accessory equipment and a couple of vehicles and a trailer.

Conti: You have all the material from Newfane Lumber?

Corio: Correct.

Conti: Height has been an issue a lot with our zoning laws and they've been attempting to get it changed. As you see we are still here because it hasn't been done yet. It seems to be a big thing right now. Any other questions from the Board? Does anyone want to speak for or against this project?

Public hearing closed.

**A motion for a negative declaration was made by Heuck, seconded by DeCastro and carried.**

**A motion to grant the variance was made by Roemer, seconded by DeCastro and carried.  
Heuck Aye, Maggard Aye, Roemer Aye, DeCastro Aye, Conti Aye**

The next item on the agenda was a request from Father Sebastian Pierro, 4268 Wolf Run Drive, SBL# 73.18-1-111, for a variance from Section 360-38B, Yards required, from the required 11.25' side yard setback to 8' to allow for a generator. The property is presently zoned R-1, one family residential.

Conti: Is there anyone here to speak? State your name and address.

Sebastian Pierro, 4268 Wolf Run Drive, Youngstown, NY. I'm located in the Town of Lewiston. I'm seeking a variance so I might be able to install a natural gas generator. I need to adjust the property line so that I can meet the variance required by the Code. My neighbor, Chuck and Karen Maio who own the empty lot next to me have written a letter saying it's no problem with this being allowed. Their intent for the empty lot is to keep it as natural beauty to add some top soil and they are good neighbors.

Conti: Do they live on the street too?

Pierro: There is an empty lot between us and then their home is right next to the empty lot. They just recently bought that lot.

Conti: Have you looked any place else on the property to put the generator?

Pierro: I tried to look in the back of the house but when I built the home, I had a patio put in with a gas grill and all that. It would take away from that. There is really no other location. On either side of the house a variance would be needed.

Conti: Any questions from the Board?

Heuck: How deep is your lot?

Pierro: 300', there is a pond and it goes across the pond.

Roemer: It's interesting, you all share the pond.

Pierro: We all share the pond. I guess when Jerry Wolfgang built the development originally that's the way he wanted it.

Roemer: There are no windows on that side of the house?

Pierro: No, yes there is a window on the garage side of the house.

Conti: Zenner & Ritter is doing it so they know how far. Any other questions? Anybody want to speak for or against this project?

Public hearing closed.

**A motion to approve the generator variance 8' from the property line was made by Roemer, seconded by Heuck and carried.**

**Heuck Aye, Maggard Aye, Roemer Aye, DeCastro Aye, Conti Aye**

The next item on the agenda was a request from Michael & Barbara DiFranco, 1555 Saunders Settlement Road, SBL# 116.00-1-6, for a variance from Section 360-53E (1), Area and dimensional standards, to be 8' closer the front property line to allow construction of an 8'x18' front porch. The property is presently zoned RR, rural residential.

Barbara DiFranco, 1555 Saunders Settlement Road, Niagara Falls, NY. I would like to build a front porch 8'x18' on the front of my house.

Conti: I couldn't tell from the pictures, how close are you now to your property line in front? I looked at those pictures.

Maggard: I would say they're about 45'-50'.

Conti: You're guessing, I don't want to guess.

Roemer: You are a little bit forward of the house next door and then there is fallow land to the east of you.

Conti: I know the law states the average of the houses around you so the person that built next to you, by building so far back threw a wrench in to it.

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Seaman: It looks to me they are about 74-78' to the road. It's basically these two lines.

Conti: 67' from the road. So basically, you're going from 75' frontage down to 67'.

Heuck: When was your house built?

DiFranco: 1950 something, I'm not sure.

Heuck: Do you know when your neighbors built theirs?

DiFranco: About 8-10 years ago.

Heuck: So before the codes they built their house. Now these other people built way far back....that's why they need a variance.

Roemer: Your house was in before the reservoir behind you was in.

DiFranco: I don't know. I didn't live in it then. I lived on Miller Road.

Roemer: The reservoir was built in the late 50's early 60's.

Conti: Any other questions from the Board? Any body for or against this project?

Public hearing closed.

Conti: Any questions from the Board?

**A motion to approve the variance request was made by Heuck, seconded by Roemer and carried.**

**Heuck Aye, Maggard Aye, Roemer Aye, DeCastro Aye, Conti Aye**

The next item on the agenda was a request from Charles & Christine Parker, 5791 Griffin St., SBL# 118.20-3-34 for a variance from Section 360-38B, yards required from the required 12.3' side yard setback to 4.9' to allow for a generator. The property is presently zoned R-1, one family residential.

Conti: Is there anybody here, please state your name and address and tell us what you would like to do.

Charles, 5791 Griffin Street, Sanborn. I do have a question for the Board. Is it possible for me to adjust my request? I received some additional instruction from Tim Masters on exactly how to measure from the operable windows in the home. That enabled me to pull the proposed

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siting of the generator closer to the house and gain about 6", so instead of 4.9' setback request I can fit this in with a 5.3" setback request.

Roemer: I saw you had some lumber set up there in the approximate location.

Parker: I actually built a full-scale model and I have it exactly 5' ¼" stick that I'm using to measure from all the windows to make sure I can get this thing cited. I have another stake in the ground at 12.25' which is the property line. With the generator turned on it's longest which is only 28", this is one of the table sized ones, I can still clear the property line if I can have 5.3' setback instead of the 4'.

Roemer: The way you have it set up now is the 5.3'?

Parker: Yes. I did speak to all of my neighbors. The one on that side of the house, Paula Beyers, has no issue at all. There is a wild grown lot next door and she prefers to keep it that way and I'm fine with that. I do believe it is wide enough to be a building lot.

Conti: The unit is 24x27, you're using the 27-length wise with your house from front to back, right?

Parker: That's what I'm hoping for.

Conti: It's only 2' wide, but you have to be 5' from the opening.

Parker: I asked the contractor about what it would take to put this thing in the back of my house. The back of my house is a concrete patio that is 24'x24' between my house and detached work shop. I have to keep moving it over towards the garage side and there's no basement under it. He said it would cost between \$1,800-2,000. for extra wiring. I can't do that.

Conti: I noticed you made a comment here that it's only going to be running during a power failure. It usually cycles once a week.

Parker: It does and I did explain that to Paula Beyer, next door neighbor. She has no issue with this. I think she asked me if I would keep her ice cream in my freezer if the power goes out. I have used a big portable generator. What I'm proposing to put in is much quieter than that big portable generator. I turn 70 this year. I can't handle that generator anymore and either can my wife. I also have a c-pap machine that keeps me breathing at night. If the power goes out the machine actually tries to suffocate me. I need something a little more automatic.

Conti: I saw the picture with the house, there's really no other place. The only other spot I see is on the front driveway side but you also have windows there.

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Parker: Exactly. In order to gain clearance from the windows I'd be pushing this thing almost in to my driveway.

Maggard: How far away is the other house?

Conti: There's an empty lot there.

Parker: There's an empty lot between us that she owns. Actually, putting it on the side where it is, is the easiest place to hide it. With that lot there it would probably be the least impact in terms of any kind of noise. Like I said, it's quieter than the portable.

Conti: Like I said, it usually cycles once a week.

Parker: I think this one is once a month.

Roemer: It's natural gas, right?

Parker: Yes, it is.

Roemer: My dad's used to run once a week. Every Friday at noon it would kick on.

Conti: You have control on that.

Roemer: You can set that up however you want.

Conti: If the person next to you worked midnights, you wouldn't run it at 9:00 in the morning to wake them up every week.

Conti: Any other questions for Mr. Parker? Would anyone else like to speak for or against this project?

Paula Beyer, 5801 Griffin Street. I own the park like setting that sits between our houses. It's just for recreation use. I put a tent up we have a little camp fire. I have no objections to him putting in a generator.

Conti: Thank you. Anyone else that wants to speak on this? Any discussion amongst the Board?

Public hearing closed.

**A motion to approve the variance request to be 5.3' was made by Roemer, seconded by DeCastro and carried. 1 against**

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**Heuck No, Maggard Aye, Roemer Aye, DeCastro Aye, Conti Aye**

The next item on the agenda was a request from Mark Hare, representing Wilma Aughtman, 1366 Swann Road, SBL# 88.02-1-33 for a variance from Section 360-53D, Area and dimensional standards from the required 125' lot frontage to 96.08'. The property is presented zoned RR, rural residential.

Conti: Please come to the microphone, give us your name and address and who you are representing.

Mark Hare, I live 1352 Swann Road. I am representing the owner because she is elderly and cannot leave her home. The reason why the owner requests that size is because she wants to minimize the financial burden of taxes and maintenance. The reason it's 96' wide is I spoke with Tim Masters about it and her sewer line comes off the west side of the house and he said it needed to be 5' away from that for maintenance in the future. He said the lot in the Town of Lewiston there is a minimum of 15' of the sidelines and this house actually has 25' from the side line. Actually, she wanted to move the line closer to the house but it can't be because of the maintenance of the sewer line. It's really just to minimize financial and maintenance burden on the lot.

Conti: What is her intent at that point with the rest of the property? This is very vague application.

Hare: I'm at 1352 Swann, I live next door. She would like to transfer the land to me as the owner next door. That's why she said she wanted to keep the lot as small as she could and convey the land because she wants to get rid of as much as she can for tax purposes and stuff like that.

Conti: It's not going to make that much of a difference on taxes but that's besides the point.

Seaman: Is she selling it to you? Do you have a contract in place?

Hare: Yes.

Seaman: Why didn't you include that information as part of the application?

Hare: Because Tim said I had to approve the lot size prior....

Seaman: It's one lot being split in two different lots. You only address a variance with regard to one of those 2 lots there. You never addressed the other one. Both of them are now under 125'.

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Hare: Correct, but Tim told me that if the 96' was ok then I would have to join that lot with my lot to make it one.

Conti: He would combine that lot in to his lot under the contract.

Seaman: That wasn't spelled out in the application.

Hare: It's not a done deal. I have to find out what the lot could be before, the whole final survey.

Seaman: My issue with it is there is a request before this Board that only addresses changing, asking for a variance for one part that her house is on to go from a minimum of 125' down to 96', but it doesn't address the other remaining part of this left with approximately 109'. It's not addressed at all. My other question is why not leave her with enough room for frontage that doesn't require the variance? Why not leave her with 125'? You buy the other portion and you wouldn't need to be here at all. Does 10' or 20' makes all that much of a difference for her?

Hare: She said that she wants minimal lot to mow. That was her request. She actually wanted it closer to the house.

Seaman: It's a very unusual request frankly. This Board is considering the neighborhood as it develops beyond a single owner or a request for an elderly person to not to have to maintain much of their yard and therefore varying the entire neighborhood is quite an odd request, one that I've never seen before.

Conti: You're talking less than 30' additional. If they would have took her lot and made it 125' you buy the 75', so instead of you having the 125' lot and her 200', now yours is 200' and her's is 125' and everything stays legal.

Seaman: You wouldn't need to be here at all.

Hare: Tim suggested that I came.

Conti: For the way she's asking this and I don't know where she had her ideas on this but what she's asking for you have to come for a variance. What should have been explained to her is the fact that you wouldn't need a variance, just a land contract to purchase and combine that additional property.

Hare: Correct and I did explain that to her and I said to her if I go and she said can you take care of this for me? That was basically her words. I don't want to go any farther over on my lawn as is. That is what she requested. I actually spoke with Tim about it at length and he told me to



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apply for this at the request of the owner to make the lot 96'. He even told me this more than exceeds the 15' on the side line there is 25'.

Conti: The big part of the fact is that you're changing the make up of the neighborhood where they are all 125' or more wide lots down to 96'. It could have been left at 125' and you buy the other 75' and combine that right in to your lot so it would make your lot 200' wide. It would just flip flop the way the two lots are.

Seaman: Both lots would be in full compliance that way. There is an option available that fully complies with the Code.

Hare: I'm not going to disagree with you on that. I'm here on the request of the owner.

Seaman: It's a request of the owner but frankly my initial question of what is going to happen to it, oh you're going to buy it. Isn't just a request from the owner, you're going to benefit.

Hare: You are correct, yes, I am benefiting from it and I actually spoke with her and I said after I talked with Tim and he told me the 125', and I told her but I measured it out and put a stake for her and she said I don't want to go way over there. I want it over here. I asked Tim why it was 125' and he said to accommodate for septic but all of Swann Road in that area is all on sewer. He said that was the reason for the 125' zoning at that time. That's why he told me as long as I was 5' clear of the sewer line where it comes out in the yard and it has the ability for maintenance for a potential future owner, he said that would be fine. He said it was fine with him but I had to come to you.

Conti: Right, because he can't change code.

Hare: Correct.

Seaman: My issue as your attorney is the application as addressed does not specify what's going to happen with that other portion. Really you have to consider the application for 2 variances, one for the 96' and another one for the .....it could potentially be a conditional approval.

Conti: If this variance gets approved, then it would be a contingency on the rest of the whole set up of being combining the lots and the whole shot. If it gets turned down then it doesn't matter.

Seaman: I think it might be a case that if I was the Board, I would recommend you tabling to gather some more information. It doesn't sound to me like there's even a deal, correct me if I'm wrong but.....a verbal deal. Do you have numbers in place, cost wise?

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Hare: We talked about price and stuff like that. When I spoke with her, we'll figure it out after...

Conti: It can't be figured out after. We need to know.

Hare: I made a deal with her in writing saying hey I gave you some money down for approximately this size, but the approximate is because we really don't know what the actual size is right until you say yes, we can do this, no we can't and then we can finalize the size of the actual lot itself. That's why Tim said I had to come here because I told him I would then join that lot and if you approved the 96' lot then both lots would be in compliance of the approval and the other part would be combined with mine and there would be no frontage issue at all I guess at that point.

Seaman: Only if the variance is granted.

Hare: It's up to the Board to consider.

Seaman: You have your five categories to walk through.

Conti: Any other questions for Mark at this point? Does anyone else want to speak on this? Come up to the microphone and state your name and address for the record.

Laura Gatehouse, 1376 Swann Road. I live on the other side of Mrs. Aughtman. I just have some questions. I know John her son had approached me and said that they had sold the land next door, or were going to sell the land to Mark and it was the empty lot and the land that goes from behind Mrs. Aughtman's house. I could be wrong, to the back property line. My concern was if the purchase is allowed, what will be built and what are your plans in the future for the back of the property because there is a ton of wild life that roam through there, deer, fox, raccoon. My son is an avid hunter and that is going to screw up the wild life if you're planning on building something back there. That is our concern. We wanted to see if it would stay wooded in the back? I was under the assumption he had bought all of the land and it sounds like I'm wrong.

Conti: From what I'm reading on this, the picture that they're showing, he's looking to purchase the other part of that property and everything behind her. That property would be an L shape. That is exactly what they are looking at doing.

Gatehouse: My concern is what are his plans and what he would like to build? If he's planning on the future building something in the back of the property. Mr. Aughtman had said that he was going to do gardens or something. I don't know.

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Conti: I understand your concerns and I agree with what you're thinking but what's in front of this Board is just a reduction of the lot size frontage. We would have nothing to say or do as far as any kind of requirements or anything like that. She wants to reduce her lot size from 200' to 96'.

Gatehouse: I know Mrs. Aughtman is suffering from early stages of dementia as well. That's all I know. I can't really say anything else about it. Her son told me that. I don't want to cause any problems. I think he's doing a great job on his property. I think he recently bought it and it looks great and I don't want to cause any problems. My concern is with the back lot line.

Conti: Would anyone else like to speak? Any one have any other questions for Mark?

Conti: I would like to table the meeting right now and have discussion with the Board.

**A motion to go in to executive session for consultation with the Attorney was made by Conti, seconded by DeCastro and carried.**

**A motion to reconvene was made by Conti, seconded by Heuck and carried.**  
Public hearing closed.

**A motion to deny the variance request was made by Conti, makes an undesirable change to the neighborhood. The benefit can be sought by the applicant in another way by going to 125' versus 96', it is substantial, 20%, will have an adverse effect on the neighborhood, will change the condition of the neighborhood with the sizes and the alleged difficulty is self-created, seconded by Roemer and carried.**

**Heuck Aye, Maggard Aye, Roemer Aye, DeCastro No, Conti Aye  
1 against**

Hare: What do I have to do now? Apparently, I didn't give Tim enough information.

Seaman: Leave her with 125' of frontage as per the code.

Conti: Combine it with your lot and off you go. There's no variance needed.

Hare: Have it surveyed at the 125' and I have to combine it. It would comply then because I would join that piece to my piece? Is that how it works.

Seaman: Leave her piece with 125' frontage and then she is complaint with the code. You wouldn't need an area variance at all. Whatever is left over then you can buy the rest from her and combine it with your property.

Hare: So, I need to combine it?

Seaman: You always would have.

Hare: I am going to combine it.

Conti: You would be gaining 75' instead of 104' of frontage. Your front is going to be 200', her front is going to be 125' and everything falls in to code and whatever property you're buying behind her that's all part of it you would combine with your lot.

Hare: Thank you.

The next meeting will be July 14, 2022, at 6:30 P.M.

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

Respectfully submitted,



Sandra L. VanUden  
Zoning Secretary



Joe Conti  
Vice Chair

**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 June 9, 2022, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Charles Corio, 2749 Upper Mountain Road, SBL# 104.00-2-63, requests a variance from Section 360-185E, Accessory uses and structures, from the maximum height of 18' to 21' to allow construction of a 40'x40' garage. The property is presently zoned RR, rural residential.

Sebastian Pierro, 4268 Wolf Run Drive, SBL# 73.18-1-111, requests a variance from Section 360-38 B, Yards required, from the required 11.25' side yard setback to 8' to allow for a generator. The property is presently zoned R-1, one family residential.

Michael & Barbara DiFranco, 1555 Saunders Settlement Road, SBL# 116.00-1-6, requests a variance from Section 360-53 E (1) Area and dimensional standards, to be 8' closer the front property line to allow construction of an 8'x18' front porch. The property is presently zoned RR, rural residential.

Charles & Christine Parker, 5791 Griffin St., SBL# 118.20-3-34, requests a variance from Section 360-38 B, yards required, from the required 12.3' side yard setback to 4.9' to allow for a generator. The property is presently zoned R-1, one family residential.

Mark Hare, representing Wilma Aughtman, 1366 Swann Road, SBL# 88.02-1-33, requests a variance from Section 360-53 D, Area and dimensional standards from the required 125' lot frontage to 96.08'. 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 Macheior  
Zoning Chairman  
N#300913