

ZONING BOARD OF APPEALS

Town Hall 1375 Ridge Road Lewiston New York  
Thursday – May 13, 2021  
ZB 2021-5

Present: Conti, DeCastro, Heuck, Maggard, Muzzi

Absent: Machelor

Presiding: Joseph Conti

Conti: Welcome to the Zoning Board of Appeals meeting, Thursday, May 13, 2021.

Pledge of Allegiance

**A motion to approve the minutes of April 2021, was made by Maggard, seconded by DeCastro and carried.**

**1 Abstention**

Seaman: Please make a note on the record that Anita is here in place of Norman Machelor.

Conti: Anita Muzzi is replacing Norman Machelor for this meeting. If you have never attended a Zoning Board of Appeals meeting before the task of the Board is to grant or deny a request 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 un-table a previously tabled variance request for the Estate of Joseph Deck, SBL# 102.13-1-80 & 102.13-1-81 was made by DeCastro, seconded by Muzzi and carried.**

Conti: We have gone through this variance for 2 meetings now. This meeting is held now to come up with a motion. Any other questions from the Board on this particular variance?

**A motion based on the Board's discussion and following considerations as the five considerations as whether an undesirable change would produce in the character of the neighborhood or detriment to nearby properties would be created granting an area variance, no. Some of the other frontages in the neighborhood are very similar in size. Whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue, yes because they can come off of Sullivan Court as originally planned by the Planning Board. 3. Whether the requested area variance is substantial, it is**

substantial from the traditional 75' frontage but in that subdivision, they seem to be smaller driveway sizes, frontages. Whether the proposed variance will have an adverse effect physical environmental conditions to the neighborhood, no it should not. Whether the alleged difficulty is self-created, yes. They want to use Oakhill Drive versus Sullivan Court. The Zoning Board of Appeals determines that the benefit of the variance to the applicant outweighs any detriment to health, safety and welfare of the community. That the variance request is the minimum necessary and the variance be granted with the following conditions:

1. The driveway stays against the north portion of the land (farthest away from the Campbell property) off of Oakhill Drive.
2. That the driveway does not exceed 16' (feet) in width until after it passes over the 16" main waterline by at least 10' (feet)
3. That the driveway will be designed to cross over the water line(s) at a 90-degree intersection so as to minimize the potential impact on the 16" waterline.
4. That the road construction material must be asphalt (blacktop) until after passing over the 16" main waterline by at least the 10' (foot) mark as determined in condition #2.
5. That any and all repairs or replacement to the driveway due to any water or sewer work by the Town of Lewiston or any other subsidiary are the sole responsibility of the owner of the parcel of land, both owners now and future property owners of this parcel of land. That this agreement also be added to the deed to prevent issues in the future. The new easement will need to be approved by the Town Attorney and filed with the County Clerk's office prior to issuance of a building permit.
6. That the landowner must prove that they have the permanent legal right to use the private road, Oakhill Drive, for egress prior to issuance of any building permit.
7. If the permanent legal use of the private road known as Oakhill Drive is denied, for any reason, it makes the approval of this variance null and void.
8. That the final engineer drawings of the plan, after the use of the private road, Oakhill Drive, is legally approved, be submitted to the town building department for final approval before starting the project.
9. That the 2 lots on Sullivan Court in question are combined into one lot.

Motion seconded by DeCastro,

Muzzi: Can we have discussion on the motion?

Conti: Sure

Muzzi: I went through the minutes so I'm prepared to act and render my findings as going through the documents. I would agree with Joe that the benefits sought by the applicant can be achieved by using Sullivan Court. I also agree with him in the motion as far as whether the alleged difficulty is self-created. I believe that it is. There has been testimony from the neighbor David Carpenter who appeared and testified with concerns about the safety of his children. He states that their play area is approximately 5' from where the proposed driveway would be located. He also makes mention the driveway would be built across 2/3rds of his lot. Mr. Carpenter also had concerns about the steepness of the driveway and safety with cars coming and going, thus possibly creating a detriment to the nearby property. Applicant is requesting a variance from Town Code 360-36B, applicant would like relief of the lot width requirement of 75' to be 24'. I find that to be substantial as it accounts for less than 2/3rds of

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what is required by the Town Code. Applicant's attorney testified on record that originally Mr. Deck's single property access would have been Oak Hill Drive. When Mr. Deck subdivided his lot, it become part of the Sullivan Court subdivision. Had this not been divided no action would be needed, thus this is a self-created event. Those are the comments I have.

**Motion failed.**

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

The next item on the agenda was a request from Carl & Cara Turner, 423 Harper Drive, SBL# 101.06-1-8 for 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.

Conti: Is there anyone here representing the Turners? We'll put it at the end.

The next item on the agenda was a request from Oleg Sapohnikov, 505 Meadowbrook Drive, SBL# 115.07-1-18 for a variance from Section 360-38B, yards required, from the required 12.19' side yard setback to 9.04' to allow for a car port. The property is presently zoned R-1, one family residential.

Conti: Please come up to the microphone and state your name and address.

Oleg Sapohnikov, 505 Meadowbrook Drive.

Conti: Can you explain to us what you are looking for?

Sapohnikov: I would like you to allow me to do the carport. I'm putting a roof over an existing parking space. It's going to be attached to the side of the house. It is my understanding I'm only extending it about 25 inches in to the setback. I talked to the Building Dept. I gave them blue prints and they told me they want me to go with the whole carport. I explored other options such as .....but it just doesn't work out. I was hoping you can allow me to build a car port.

Conti: I'm got a little confused on the application. You're saying you need 1'11" is the required setback?

Sapohnikov: Yes.

Conti: They are showing you are 19.57' from the side setback. You are saying to 11' which would be a 4' variance. You're saying you're going to be 11' from the side setback?

Sapohnikov: I have a drawing from my architect.

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Conti: I saw that too. (looking at drawing)

Sapohnikov: It's going over the existing parking spot. I'm attaching a roof to go over it.

Conti: So, you're looking for relief from 15' width to 9' to almost 11'?

VanUden: The requirement for him is 12.19'.

Conti: So, you're asking for 3' in the front and 1'11' in the back.

Anita: Is that all open?

Sapohnikov: Yes, it's all open.

Conti: Any questions from anyone on the Board?

Muzzi: You mentioned there are other carports within your neighborhood? Whereabouts would be the closest one to your home?

Sapohnikov: I don't have exact locations right now.

Muzzi: In the general neighborhood?

Sapohnikov: A couple of the side streets. Most of the homes have 2 car garages. Mine has only 1.

Muzzi: You said you looked at awnings as an alternative and that didn't work?

Sapohnikov: I did yes. It doesn't look right. I went to the Building Dept. and they told me to come in front of the Board and ask if they could allow me to build a carport.

Muzzi: Would you say that the concrete that's already poured was your difficulty in conforming to what the Code is or were you already set on pulling it out that far?

Sapohnikov: The main reason is I want to have a roof over the parking spot.

Conti: Any other questions from the Board?

**A motion to approve the variance as presented was made by Muzzi, seconded by Maggard and carried.**

**Muzzi Aye, Conti Aye, Maggard Aye, DeCastro Aye, Heuck Aye**

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The next item on the agenda was a request from Roderick McGill, 4668 Creek Road, SBL# 87.20-1-3 for a variance from Section 360-185 B, Accessory uses and structures, from the required 5' setback to 0' to allow a pole barn to be on the property line. The property is presently zoned R-1, one family residential.

Rod McGill, 4668 Creek Road. I'm in the process of getting a pole barn built in the back yard. I have a culvert ditch along the south side of our property belonging to the Town. I'm requesting a variance to allow me to put the pole barn to the property edge. I have some pear trees on the other side and I'm trying to avoid taking them down. I do have some pictures if you'd like showing the ditch? This is a right-of-way belonging to the Town going from Creek Road to the Golf Course. It's more of a utility path.

Muzzi: This fence is on your property? That is on the lot line?

McGill: Yes. It's hard for the Town to maintain.

Conti: What you're asking for is 100% variance....I know it's 5' but 5' is the required setback for a pole barn. Your lot goes back over 600'. Is there a reason why you couldn't move it a little farther back or avoid the pear trees? You have a lot of land.

McGill: I do. I actually had to clear some woods to make room for it. There is a lot of hard wood on my property between me and the golf course. We've got little ones; I actually have 2 grand children in the past year. I don't want to get them any closer to the golf course if I don't have to. Yes, I do have the property but I'm trying to avoid going any further back if I can.

Conti: To put anything on a property line is something that, it's 100% substantiality against the Code and to put it on the property line is something that is very hard to get through.

Muzzi: Is it fire rated, fire coded or is it just a pole barn?

McGill: It's just a pole barn.

Muzzi: I mention this to folks that want to build closer, there is a 5' radius between where your property line is and you can put things before something has to be fire coded. I bring that to your attention. Sometimes that can add cost on something like that. What was your back up plan for this?

McGill: I would like to go to the property line. If I can't go the full 5', I understand. I'm just looking to try to avoid, I usually have to maintain that side of the ditch to begin with. There's probably about 8' of grass there that I try to keep down to keep mosquitoes and what not getting out of control. I'm just trying to avoid another 5'.

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Muzzi: I think the other thing you have to be mindful of when you get that close to an easement, if anything had to go on with that easement and you're disturbing dirt and rocks that might be critical to what you have on the other side. That's always a concern too.

Maggard: How big is the pole barn that you're wanting to build?

McGill: 30'x40'.

Maggard: How high?

McGill: I believe it's 16' to the peak. TNT is submitting to me.

Muzzi: Is there an overhang on it?

McGill: 1'.

Muzzi: So you would actually go 1' in to the easement then.

McGill: Yes.

Conti: Now you're off your property line.

McGill: I'm sorry, 1' to the edge of the easement. The easement would be the edge of the property line.

Muzzi: So, the structure is going to be 1'-2' in from that?

McGill: 1'.

Conti: Is there anyway you can bring the shed over? I know you have some pear trees there but.....or go to a smaller shed, go 25'x40'?

McGill: I'm trying to ask for the variance because I don't mean to say it's wasted space but it's an area that I'm maintaining and I'm trying to avoid 5' of over grown.....

Muzzi: He has to be 15'.

VanUden: If he's 100' back it's only 5'.

Muzzi: This is really substantial what you're asking. We don't....I have a problem with it being right on the property line for a lot of the reasons I just mentioned to you. The fire rating, the substantiality of it. You do have the yard space to adjust it. It is self-created.

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Conti: Any other questions from the Board? Is there anyone here to speak on this variance? Any discussion?

**A motion to deny the variance request due to the substantiality and the items pointed out and based on the footage requested was made by Muzzi,**

McGill: I'm asking for whatever I can get.

Conti: Anything within that 5', your barn now has to be fire rated which adds a huge amount of money to a pole barn or any shed or any structure. We try to stay within the 5'. That's really getting close to your lot line.

**Motion seconded by Heuck and carried.**

**Muzzi Aye, Conti Aye, Maggard Aye, DeCastro Aye, Heuck Aye**

Seaman: Sandy, did you or Tim talk to the other applicants?

VanUden: I sent them notices, yes.

Seaman: You expected them to come?

VanUden: Yes. Turner was on a few months ago but they were going to sell their house so she pulled her application. Then she called and they are not going to sell the house so she asked to be back on the agenda.

Conti: We can either table both of them until next month or we can talk about it and vote on it. Those are the 2 options. Any discussion on that? On Carter's which is Raymond Drive, she is looking for a 2' setback for a generator.

VanUden: They had already started it.

Conti: Turner wants to go from a 15' side setback to a 5'. Do you want to look at the one on Raymond Drive? Should we open the meeting for that one?

Muzzi: Sure.

The next item on the agenda was a request from Barbara Carter, 656 Raymond Drive, SBL# 101.08-6-13 for a variance from Section 360-38 B, Yards required from the required 13.5' side yard setback to 11.5' to allow for a generator. The property is presently zoned R-1, one family residential.

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Conti: There is no one here representing Carter. Any discussion? They are putting a generator on the side of their house. They need a 2' variance from the property line. The Town requires 13.5' side setback they are requesting to go to 11.5'.

Maggard: That's not substantial.

Conti: Any other discussion?

Muzzi: Whether or not the benefit sought by the applicant can be achieved by another method. I would think no because as they mentioned in their application the house design and windows would prohibit other placement. I don't believe 2' is substantial. As far as the physical or environmental conditions of the neighborhood I don't believe it would have any impact. The hardship, I'm going no on the hardship because the design of the house and the placement of the electrical and gas and all the hook ups seem to be on the other side of the house.

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

**Muzzi Aye, Conti Aye, Maggard Aye, DeCastro Aye, Heuck Aye**

**A motion to table the Turner request from Harper Drive was made by Heuck, seconded by Muzzi and carried.**

Conti: Anita would like to say a few words.

Seaman: Are you just generally speaking?

Muzzi: It's information about training. I don't know if anyone here has been taking advantage of the on-line sessions. They are usually held by the Planning Federation and they have different guest speakers and different topics. They are always at lunch time. You can go on with your phone, you can print your certificate right after. You can get all your training and hours that you need in pretty darn quick. I just wanted to let everyone know that in the month of June, I think it's every Wednesday they are having environmental stuff that would have solar type training in there.

The next meeting will be June 10, 2021, at 6:30 P.M.

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

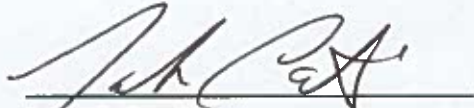


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Respectfully submitted,



Sandra L. VanUden  
Zoning Secretary



Joseph Conti  
Vice 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 May 13, 2021, at 8:30 P.M. in the Town Hall, 1375 Rkdge 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.

Oleg Sapohnikov, 505 Meadowbrook Drive, SBL# 115.07-1-18, requests a variance from Section 360-38 B, Yards required, from the required 12.19' side yard setback to 9.04' to allow for a car port. The property is presently zoned R-1, one family residential.

Roderick McGill, 4668 Creek Road, SBL# 87.20-1-3, requests a variance from Section 360-185 B, Accessory uses and structures, from the required 5' setback to 0' to allow a pole barn to be on the property line. The property is presently zoned R-1, one family residential.

Barbara Carter, 656 Raymond Drive, SBL# 101.08-6-13, requests a variance from Section 360-38 B, Yards required from the required 13.5' side yard setback to 11.5' to allow for a generator. 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  
#N283397

5/6/2021