

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – October 14, 2021
ZB 2021-10

Present: Conti, DeCastro, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

Machelor: I'd like to call the meeting to order and I would like to ask everyone that is able to stand to stand and say the Pledge of Allegiance.

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

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to grant or deny requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or preformed 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.

Public Hearing Opened

The first item on the agenda was a request from Glen Campbell, 1612 Ridge Road, SBL# 89.03-1-33, for a variance from Section 360-185D, Accessory uses and structures, to allow for a fourth accessory structure on the property. The property is presently zoned RR, rural residential.

Glen Campbell: The only reason they had me first was because I have to go to work at 8:00 but I called in.

Machelor: Tell us what you want to do.

Campbell: I rebuilt the garage which was one structure, the garage was collapsing and it's the same size but it's taller. I put a shed on the property because when we first moved in 7 years ago there was no where to put anything. We put the shed on there. There was a carport already there. We had re-shingled it because it was rotting away. Those are 3 things. My wife has had a hip replacement and 2 shoulder surgeries, now she's getting her shoulder redone. Our doctor said it was good therapy for a hot tub. So, we bought a soft tub because our electric won't handle a hot tub. We got the soft tub and put it on our patio. It took up a lot of our

patio. The snow and the rain collected on the hot tub and was running in to the front of our door way because we had the cement redone and it costs us \$5,000. And he didn't pitch it right. There is no pitch on it so the water collects right there. We had to put it somewhere. I had a pad put down and they said it didn't matter what kind of pad I put down because it's not a structure. I thought I'll put it out there. It's a 12'x12' pad. It's just 2'x12's. I put it out there. I put a canopy on it. The canopy blew away. I bought another canopy 12'x12' and I tacked it down really solid and this time it blew it up on top of the house and wrapped around the chimney. I can't believe the way the draft runs up the side of the hill. I put 4 poles up and the poles were starting to shake so I put a wall on the back. I wanted to put a top on it so it won't blow away but then they said I was building another structure. I guess I have to get another structure built. It's for medical purposes that we have the hot tub. I need a shoulder replacement too. I'll be retiring next year I want to make sure I'm comfortable so I want to get this done before next year.

Machelor: I don't know from your paper work how this all looks on the ground. I don't know where all these things are.

Campbell: I have my phone; I can show you pictures.

Machelor: That would help but the point is what we would really like is a piece of paper that shows your property lines on both sides, where your house is and where your structures are. All those things.

Campbell: It's centered right in the middle of the property, away from the house and the garage and the fence. You cannot see it from either property or the road. I have the feet. I measured it out and I have the feet written down how far away from the house it is, how far away from the garage and how far away from the fence it is.

Conti: A couple quick questions. You said you rebuilt the garage and made it taller. Did you get a building permit for that?

Campbell: Yes, I got a permit. He said I can go to 18'. It's 17.9'.

Conti: When you built your shed, did you get a permit to build the shed?

Campbell: I bought it built already. I got a permit for that. I got a permit for my front porch.

Conti: And the carport too?

Campbell: The carport was there. It was built in 1973. I got a permit for the fencing around my property because I have 4 miniature dachshunds and they're all registered.

Conti: The hot tub, do you need to get a permit when you get a hot tub?

VanUden: Yes.

Campbell: It's actually a soft tub, you plug it in to a 220 line. It's not a hot tub because a hot tub has to be hard wired right in to the line going to your box. When we moved in there was no 3-prong things. We had to have an electrician come to the house and put in 3-prong things. He said a hot tub, you would have to get more power in to the house and it would cost \$4,000. We looked for alternatives then and the alternative was the soft tub is what they call it. It looks like a hot tub but the power...

Conti: Do you need a permit for a soft tub?

VanUden: I believe you do.

Conti: You still need a permit for that.

Campbell: I'll pick up whatever you need. We were going to get one of those tubs in the house, the spa tub but we both can't fit in it. We figured a hot tub would be better.

Conti: I just want to read this letter that was submitted to us: I am the owner of 1606 Ridge Road. Steven Stevens was my dad and the property is part of his estate. Unfortunately, I just left the area last night to return to Delaware. Upon opening my mail this afternoon in Delaware, I read the hearing notice scheduled for this evening concerning 1612 Ridge Road. I strongly feel that another accessory on the property at 1612 Ridge Road is undesirable. This property is out of control. Since the new ownership took place, the property continues to fill up with various items and structures. Also, I would like to note that an additional small shed has been placed in the second fenced in area on his property. Thank you for your time. Linette Brandon

Campbell: Yes, I've had a lot of trouble with her. She is trying to tell me that herare my problem because one tree that we got in our yard which is over our fence. I said well cut it down.

Conti: That has nothing to do with this here.

Campbell: I just have so many problems. She complained about my dogs too.

Conti: I'm just reading the letter in regards to this here.

Campbell: She can't even see it. She has an 8' fence there.

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Machelor: That's beside the point. Let me go in to the letter a second. She says that she doesn't think another accessory structure is appropriate. That is her contention. That's her opinion. Then she says at the end I would like to note that an additional small shed has been placed in the second fenced area on his property. What does that refer to?

Campbell: It's like a.....I put my yard stuff in there. It's not actually a shed.

Conti: Does it have 4 walls and a roof?

Campbell: Yes.

Conti: That's a shed.

Campbell: I move it around.

Conti: So, this would be a 5th structure then?

Campbell: I guess. I'll tear that down. I move it around.

Conti: So, you didn't get a permit for that either then?

Campbell: No not that. I got the fence around it. It's up on the hill.

Conti: Now we're up to 5 accessory structures on your property.

Campbell: I guess it you want to call it that.

Conti: It has 4 walls, a roof and a door so it's a shed.

Machelor: Is your car port attached to your house?

Campbell: No.

Maggard: Is your shed attached to your house?

Campbell: No.

DeCastro: Is the garage?

Campbell: No, they told me I had to be 10' away from the house. When I built the new garage, I had to go back 6 more feet and I had to be 5' away from the property line on the other side so I had to take down 4 – 75' trees.

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Conti: So, you're actually asking for your 5th accessory structure on your property and the law states you can only have 2.

Campbell: 3.

Conti: 2.

Maggard: 2 structures on the property.

Campbell: So, when I first moved in and it had a garage and a carport, I wasn't allowed to bring in a shed?

Conti: There shall be no more than 2 accessory buildings per lot allowed in any residential district, except for the RR district. The RR district the restriction only applies to lots less than 5 acres in size. That is 360-185 D under the zoning laws. How large is your property?

Campbell: I have a little over 2 acres. That's crazy, I can't even have a shed.

Conti: You can have 2 accessory buildings.

Campbell: I can't have the carport and the garage and the shed.

Machelor: Let's just say all you had was the garage and the car port. You could come in and ask for a shed as a variance. Now we are up to 5 structures. 2 of them haven't even been permitted. In other words, if you had come in for the first permit, they would have told you right a way wait a minute we can't give you a permit because you already have 2 structures on the property. They wouldn't have given you a permit to put up another one.

Maggard: If the car port was attached to the garage, it would be considered one area I believe. Is there a possibility you could put this hot tub in the garage or car port?

Campbell: It would look silly but I guess. I think the whole thing with that letter is the lady doesn't even live there. It's a vacant house.

Conti: She owns the property so it doesn't matter.

Maggard: It doesn't matter about this letter anyway because you're way out of bounds as far as the amount of structures on your property. I'm not even looking at this letter and it wouldn't make any difference.

Machelor: If we had a drawing of your property and where these structures are it would be even clearer.

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Campbell: Actually, there is a, you have in the building inspector's office a survey in my last permit for my last structure I gave them a survey and I can pin point it for you.

Machelor: It's the number, we're not contesting where they are put. That would be another thing if they weren't in far enough from the lot line and all. This is simply the number. You have way more than you should and you haven't even got them permitted.

Campbell: I got all but one permitted.

Conti: Two because you have a fifth one. You're asking for your fifth one, you already have on your property. You have the one that you said you didn't know you should get one for. You didn't get one for the hot tub. The car port was already there.

Campbell: The garage was already there. I just moved it back and rebuilt it.

Machelor: Any further questions from the Board? I'll entertain a motion.

Campbell: Before you make a motion, can I ask what I can possibly do to get this to go? If I tore down that little shed....

DeCastro: That is something for the Building Dept., you can ask them how you could get in to compliance.

Campbell: As far as right now there is nothing I can do?

Machelor: No, because what you've brought to us, is the only thing we're ruling on. After we rule then I would go to the Building Dept. and say okay what can I do next or how do I proceed from here? We're not doing that.

Conti: Did you start building this?

Campbell: I put the poles up and the one wall to hold the poles up because the wind was blowing that around.

Conti: Before you got the permit?

Campbell: Yes, I didn't know, it's not a permanent structure, I didn't know it was required.

Conti: It is a permanent structure, you have a pad, you have poles in the ground....

Campbell: The poles are on top of the pad. They are just setting there. If I leave it like that it will blow away. What if I just set it on the pad? I was told by the Building Inspector that it doesn't matter if you cement your whole yard as long as it's not a structure.

Conti: You're talking about just leaving the soft tub on the pad?

Campbell: Yes.

Conti: That is something you would have to talk to Tim with. In front of us it's the accessory structure.

Maggard: You need a permit for the hot tub anyway.

Campbell: Yes, that's no big deal. It just plugs in. Our electricity doesn't hold a hot tub capacity.

Machelor: This is an open public hearing. Does anybody in the room have anything to say?

A motion to deny based upon the fact it exceeds the maximum allowable structures for the property was made by Heuck, seconded Maggard and carried.

Conti, DeCastro, Heuck, Machelor, Maggard

Public Hearing Opened

The next item on the agenda was a request from Chris Smith, 1547 Saunders Settlement Road, SBL# 116.00-1-2.122 for a variance from Section 360-185E, Accessory uses and structures, from the maximum height of 18' to 20' to allow construction of a 40'x50' pole barn. The property is presently zoned RR, rural residential.

Machelor: Mr. Smith, tell us what you want to do.

Smith: I need the space for the storage. I have a tractor and some implements outside. There are about 5 of them that are rusting away in the back yard. I want to put them in a pole barn and all the implements. I just don't have room. My current garage is packed. I'm looking for somewhere to put my tractor and the attachments.

Machelor: There is something important about the 2' that you need?

Smith: The reason why it's taller is from what I understand by talking to Tim is because it's 40' wide and 50' long. The trusses are taller because there is more of a span so it's 2'.

Machelor: It changed the pitch.

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Smith: Yes. I know my neighbor did put a 14' high wall with a 25' peak or better. He got a variance on his. I was hoping they would give me a couple feet that I need for mine because of the size of what I need.

Machelor: Questions from the Board?

Maggard: You are just building this pole barn now or is it already built?

Smith: I didn't start it yet because I wanted to get the variance first and then my next step is the permit. I'll have to start the ground work. I think they're talking the end of this month or the beginning of next month starting it. I'm just trying to get everything in place before I go jump the gun. That's pretty much it.

Machelor: This is a negative declaration. Essentially what it means is they didn't find anything in your proposal that would be harmful to the environment.

A motion to accept the negative declaration was made by Conti, seconded by Heuck and carried.

Machelor: I look at this and say it is not a substantial amount you are looking for. I don't see any impact other than that. I agree that when you do a 40' span you need a different pitch.

Smith: I didn't want to lower the pitch because of the snow load and everything. I didn't want to lessen the size of what I need. I do need the space for everything I plan on putting in there.

Machelor: Questions from the Board? Questions from anyone else in the room?

A motion based on the Board's discussion the ZBA determines that the benefit of the variance to the applicant outweighs any detriment to health, safety and welfare of the community, that the variance requested is the minimum necessary and the variance be granted was made by Conti, seconded by Maggard and carried.

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

The next item on the agenda was a request from Justin VanDusen, 4119 Calkins Road, SBL# 73.16-1-4 for a variance from Section 360-38, Yards required, A (1) from the required 50' front yard setback to 44.72'. The property is presently zoned R-1, one family residential.

Public Hearing Opened

Machelor: Mr. VanDusen explain why you want to do this.

VanDusen: I want to increase the value of my house and make it look nicer as well, better curb appeal. That's why I want to do the front porch. To be honest with you though from my surveyor and my architect and everybody had to do with measurements and even looked at satellites, I don't really need a variance. I'm within the building rights. I guess my property is deceiving. But if you look at the survey, I'm within the buildable area with no variance needed. My architect is like I don't have any idea why they're making me get a variance. The surveyor said the exact same thing. They said just play the game. We're all curious as to why I'm here to be honest with you. I shouldn't need a variance. I'm within the buildable area. I'm actually further back than all my neighbors. The problem is when you look at my property, the street angles to the right. That's not a straight road. My front yard is much larger than their yards. If you look at any satellite images my property is further set back than their properties. If you measure from where my perceived the beginning of my front porch would be to the crown of the road, that's a further distance back than all my neighbor's garages that are currently there to the crown of the road. Even with my addition I will be further back than all of my neighbors.

Machelor: Those things are all considerations but the fact is your property line is where it is. We can't judicate everybody on the street.

VanDusen: It's an accurate survey. We just had it redone when we bought the house in 2014. I'm within, whatever we're requesting a variance. I'm playing the game and coming for it anyways. I was going to have my architect and everyone come here. We don't understand why. We specifically built it within it. Before we even did it my architect actually met with Tim and said this is our plans, can we go forward with this and he said yes you are within the buildable area. We actually have the email back from March 15, 2021. We had the drawings done in June. We went by Code; we went off the law and what your requirements are and we're within the law requirements but something has changed somehow since then.

Machelor: I don't know about that.

VanDusen: We don't need it. That's what we're trying to figure out.

Machelor: It's deceiving as you know. When you stand on the road and look at your house and you say your house is far enough back from the road, nobody should complain. Nobody is complaining except the Town said look, you came in and asked for a permit to do something we looked at it and said well you're exceeding the depth, you're shortening the depth that you need. Before you go in to hard, the truth is that 6' deep is not really a substantial amount. If you came here and said you wanted to build 25' from your line we would say well no.

VanDusen: I get it.

Machelor: Or 18' or some other amount. This is a fairly small amount. The rule is what it is and that's why you're here.

VanDusen: I respect the process for sure.

Machelor: Does anyone have any questions?

Maggard: Yes, I do. Looking at this large drawing here and you have the U driveway over here and it has nothing to do at all with this, with what you're doing, I'm just wondering why you are doing that?

VanDusen: The plan is eventually to do a circle driveway. We're not at that step right now. I guess the architect thought that would be a better design. Something for me to consider, I guess. With building costs going up and stuff like that it's not something we're planning to do right now. Everything has gone up drastically. The main thing is the garage was important because I have a lot of vehicles. I want to get them off the streets and out of my driveway. I'm sure the neighbors don't want them on the street either. I like things kind of tucked away and hidden. I want to comply with that too. Curb appeal is important. That was the main thing too but the main thing is we want to make the house look like it wasn't just keep added on to. We want to make it look like it was designed that way. I'm spending all this extra money with the how the roof lines are. I could easily put a pole barn on but there is no value to that. A 2-car garage that's not attached or I could have attached it but you have those stupid valleys in your roof. I'm wasting so much money re-roofing the house so that all the lines flow so when you look at my house from the street it looks like it was designed this way initially. It wasn't just chopped on. My mother is a real estate agent. She's all about curb appeal. The value of the neighborhood, I live on a nice street. My house when I bought it was probably one of the lower end houses on the street. Now the houses down the street are going \$600,000. -\$700,000. I want to put value to my house so I can hopefully increase the value of the whole street eventually. As soon as you start doing something to your house, your neighbor's start doing things to their house. That's the plan. We're trying to do it the right way. We consulted with my mother and she consulted with a lot of different architects and designers and this was the best plan to have the best curb appeal.

Maggard: Thank you.

Machelor: Would anybody else like to speak? This is a public hearing.

Public hearing closed.

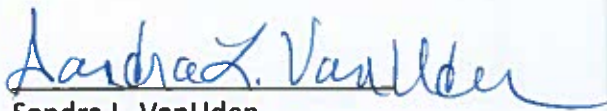
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A motion to approve the variance based on the Board's discussion, the ZBA determines the benefit of the variance, the applicant outweighs any detriment to the health, safety and welfare of the community and the variance requested is the minimum necessary and the variance be granted was made by Conti, seconded by Heuck and carried Conti Aye, DeCastro Aye, Heuck Aye, Machelor Aye, Maggard Aye

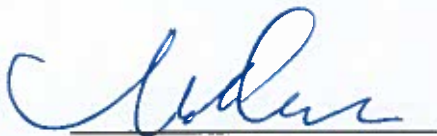
The next meeting will be December 9, 2021, at 6:30 P.M.

A motion to adjourn was made by Conti, 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 October 14, 2021, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Glen Campbell, 1612 Ridge Road, SBL# 89.03-1-33, requests a variance from Section 360-185 D, Accessory uses and structures, to allow for a fourth accessory structure on the property. The property is presently zoned RR, rural residential.

Chris Smith, 1547 Saunders Settlement Road, SBL# 116.00-1-2.122, requests a variance from Section 360-185E, Accessory uses and structures, from the maximum height of 18' to 20' to allow construction of a 40'x50' pole barn. The property is presently zoned RR, rural residential.

Justin VanDusen, 4119 Calkins Road, SBL# 73.18-1-4, requests a variance from Section 360-38, Yards required, A (1), from the required 50' front yard setback to 44.72'. 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
#N290460

10/7/2021