

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – March 12, 2020
ZB 2020-3

Present: Conti, Heuck, Machelor, Maggard

Absent: DeCastro

Presiding: Norman Machelor, Chairman

Machelor: I would like to call the meeting to order and ask all that can stand to stand and Pledge Allegiance to the Flag.

Pledge of Allegiance.

Machelor: Please take a minute to look at the minutes of the meeting of February 13th.

A motion to approve the minutes was made by Maggard, seconded by Heuck 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 performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance of the Code to continue the project or a denial to prohibit a project as presented.

The only item on the agenda was a request from Scott Stafford, 4635 Creek Road, SBL# 87.16-1-32, requests a variance from Section 360-38B, Yards required, from the 15' side yard setback to 14' to allow for a 15'x35' addition. The property is presently zoned R-1, One Family Residential.

Public hearing opened.

Machelor: Mr. Stafford if you would come forward and please state your name and address for the record and tell us what you would like to do.

My name is Scott Stafford, 4635 Creek Road. I'm looking to put an addition on my house on the north side of it, 15'x35'. The 15' will be heading north towards the property line which will be a 1' encroachment in the variance. I'm looking for a 2-bedroom 1 bath. That is the same style roofing and siding that is current so it's appealing to the eye and the neighborhood.

Machelor: The reason that you're here is because this addition will take up one more foot of the side yard.

Stafford: That's correct.

Machelor: Unfortunately, the drawing, if you want to come up and talk to me about the drawing. Everyone has a copy of this. It didn't come out very well.

(looking at drawing)

Stafford: This is the bathroom; this is the hallway. The existing house is here, a 3' center hallway so we can get furniture in and out. A 12'x14' bedroom with a closet and then we put the bathroom between the 2 bedrooms. The property line.....the outside wall is here; the dotted line was the eve because I didn't know how the variance worked. The outside wall is here. The overhang would be 2'.

Machelor: From the wall to the property line is?

Stafford: 14'. The 1' encroachment would be technically would start here.

Machelor: The overhang doesn't matter.

Conti: If it goes beyond 2' it matters.

Stafford: The 2' is to match the existing overhangs.

Machelor: The criteria for area variances, we call it a balancing test. In other words, whether the thing could be done differently is an example, whether it is going to do something to the neighborhood that is not good, whether it's substantial, will it have environmental affects? Those are the things we consider when we decide whether to do this. Any questions for Mr. Stafford?

Heuck: When you do the bump out are any trees going to be removed?

Stafford: No.

Maggard: Are you going to put a basement underneath?

Stafford: No. I'm looking at a crawl space, not a full basement.

Conti: You looked at other possibilities?

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Stafford: I did, I have a pool and deck behind the house so I can't go out there. I tried the south side but I have the dog kennel which I made special arrangements to put it there. Also, I have the roof line that does not match. I would have to change my entire roof line on that side of the house along with the utilities.

Machelor: The way your house sits right now you are 29' from the property line.

Stafford: I think if you look at the plan it's 29.1 or 29.2'.

Machelor: Any other questions from the Board at this time? Thank you, Mr. Stafford. Is there anyone else that would like to speak to this issue? Please state your name and address.

Dan Sonntag, 4629 Creek Road: We are on the north side adjacent to the property. We just have some concerns about the plans. We haven't seen it staked out yet at this point which I know is something that is supposed to happen. We really don't have a good idea of how much it is going to encroach on us and what it would look like. It's supposed to be done I believe 5 days in advance. That's never happened or has not currently happened. We just have a few concerns about how things will be.

Machelor: I would just say to you that if Mr. Stafford had made this within zoning regulations you wouldn't be here at all. What we are talking about here is the 1', not whether he is able to build an addition to his house. The only question that we are answering is can he build that within the 15' setback and get 1 more foot. That is what we are here for. Address that issue not.....when he gets to the building section if it passes, then all of the other regulations will be in and the Building Inspector will be out there and all of that.

Sonntag: We're just concerned about the impact it could have on our house and our property being closer to it than the guidelines say. They are there for a reason. We're just concerned about the potential impact on our property as a result of this.

Machelor: Do you know how close you are to the property line?

Sonntag: I do not know off the top of the head.

Conti: There must have been a variance at one point that got you closer to the property line then.

VanUden: If they are less than 100' wide then it would be a smaller side yard setback.

Sonntag: It was like that when we purchased the house.

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Seaman: I would like to note for the record sir, your wife had signed and sent in a letter is that correct?

Sonntag: Yes.

Seaman: You also had your attorney send in a letter correct?

Sonntag: Yes.

Seaman: I just wanted the record to note that those two letters have been received and reviewed by the Board.

Machelor: They will be part of the record. Could you be more detailed in your comments about your concerns?

Melissa Sonntag: One of our concerns is the impact of drainage on our property. Our other concern is privacy. Our other concern is we feel as though the addition could be built within the Town Code. There are other places that it could be built to not encroach on our property line. The addition could be made 1' smaller and it wouldn't encroach. It could be built on the south side of the property where it wouldn't encroach. Mainly our concern is drainage. It's a huge issue for our yard. His property is graded towards ours so any run off does come in to our yard and our yard does pool for a good 50% of the year kind of.

Machelor: Do you feel there would be more problem with drainage with the addition there than just open to the sky?

Sonntag: I honestly don't know. We haven't been given the opportunity to investigate the matter at all. We really just found out about this.

Maggard: I would like to say that this was put in the Niagara Falls Gazette, 5 days prior. Did you see that?

Sonntag: No, we don't receive that newspaper but we received the mailing on Saturday.

Conti: That is by law.

Sonntag: We knew at that point also that per the application the requirement was that the addition had to be staked out five days before the hearing. We didn't see anything staked out. I'm assuming this has been in the works for a while. I never heard from Scott personally about it. We just assumed it wasn't on our property line and it was nothing we needed to investigate. Then I realized nothing was staked out so I was able to take time out of my day to come down yesterday to get a copy of the plan. That's when we realized it was on our line.

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Conti: It's not on your line. It's only 1' on the north side which is an extremely low amount of a variance that someone would request from the Board. It's not anything substantial as far as that goes. The drainage, I'm assuming the land is not going to change as far as the pitch, it's not going to get higher at that point.

Stafford: That would take up more area space which would alleviate more of the drainage because that will be put in to the storm sewer.

Machelor: You would capture that.

Stafford: That square footage would go to the storm sewer and not on the side yard.

Sonntag: I would like to be able to have the opportunity to speak with somebody who deals with drainage to confirm that. I personally don't understand why the addition is not able to be built on a different portion of his home where it wouldn't have to encroach on anybody's property line.

Conti: He went over that already. We're not here to say we want you to build somewhere else. Our concern is the 1' at this particular point. We asked that question and he gave some answers as far as why it couldn't be built in certain other areas of the house.

Sonntag: Can I add something to that? I understand his concern about not being able to build the addition on the south side because of his garage and dog kennel. That I understand. On the south side of his house facing the back yard, half of his property is a deck and half of it is the pool. The other of the back of the house is open and you could expand right there and it wouldn't be an issue. That would be a possibility.

Machelor: We're really not here to discuss the possibilities, we're really here to discuss whether or not we feel that we can grant a variance of the Town Code, your property line, he isn't going to build on your property. He is just going to build 1' closer to the property line rather than no feet. I read through it pretty thoroughly, the way he designed it, he feels he had to have a 3' hall way and therein is where the foot is, I think. It's according to Code. The neighbors of opinion of possibility is just an opinion and we'll take that in to consideration. Do you have anything else to add?

Sonntag: I don't think so, no.

Public Hearing closed.

Machelor: Do you have any further questions of the petitioner?

Seaman: I have one question. We haven't talked about this topic much although the applicant has written about it in his application sir if you could speak to whether or not this alleged difficulty is self-created and to what degree do you believe it was not self-created?

Stafford: What is your definition of self-created?

Conti: Should we re-open the public hearing first?

Public Hearing Re-opened

Stafford: What is the definition of self-created? I'm extending my family. Would that constitute self-created?

Seaman: No, self-created is something that you imposed on your own property of your own making and now you're trying to get out of it essentially. Self-created, I would ask you to use your own definition of what you believe the general term for self-created is and speak to that.

Stafford: I would believe it's not self-created.

Seaman: Can you articulate why it's not?

Stafford: I will be increasing my family size by 5. With the current architectural layout of the house, I don't have enough bedrooms to accommodate enough kids and enough bathrooms. To have 7 people share a bathroom would be a little absurd. We're trying to alleviate some of those issues.

Machelor: What we say about that is self-creation won't necessarily determine the answer. It's just relevant to this issue. Another one, the substantiality of the question would be a percentage. For instance, a percentage of 15', 7.5' would be 50%. That would be substantial. If you wanted to go close to 7.5' from your property line that is obviously substantial. Anything under 50% becomes less and less substantial. You're at 8% or so. As far as the environmental affect I think you answered the question that you're going to capture the water that would fall on this property normally, you're going to capture that and send it off to the storm sewer. I would say that test is fine.

Conti: It's less than 6%.

Maggard: After you have it constructed, what are you going to do on the side of the house to make it look like it's part of your home?

Stafford: It will be sided to match as close as possible to the current siding.

Machelor: Windows?

Stafford: Same thing double-hung, everything is to match the current house.

Conti: Everything will look like it's always been part of the house.

Stafford: Correct, as best as possible, because the siding and windows are 20 years old. I won't be able to get an exact match but as close to it as possible. I don't want it to look like it got thrown up. I want it to be pleasing to the eye.

Maggard: Have you thought about any other areas such as the back of the home?

Stafford: Like I said my kitchen is in the back, the deck and the pool. It would be a substantial amount of under taking to move all that.

Machelor: Are you increasing the size of your family?

Stafford: Yes.

Machelor: I heard you say that but I didn't know what you meant, because they are growing older

Stafford: People are moving in to my house.

Machelor: Okay you don't have to explain that I just caught it and wasn't sure what you meant.

Conti: There are two kinds of variances that we usually deal with, an area variance and a use variance. An area variance we have approximately 5 facts that we have to look over and determine if we are going to deny the request or accept the request. We use those to help each other but we do not need to satisfy every one of those questions. A use variance where you are changing the use of the property every one of the criteria has to be met. There is a huge difference between a use variance and an area variance. I think there might be a bit of confusion on this here being an area variance where we go through the criteria but we do not need to have all 5 of the criteria exactly met on granting an area variance whereas a use variance we would have to meet every criteria word for word. There is a huge difference between them. This is an area variance; we go through the criteria to help us determine the facts we find on it. Then we go from there. There might have been some confusion that we had to meet every criteria on an area variance, we do not.

Public hearing closed.

Machelor: I'll entertain a motion.

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A motion based on the Board's discussion and the following considerations, as we went over the 5 different considerations whether or not a desirable change would produce. There will be very little undesirable change in the character of the neighborhood. Would a detriment to the nearby properties considered, it's only 1' which is the least amount of a request we could have granted? Whether the benefit sought by the applicant can be achieved by some other method, we talked to him and what it looks like at this point, it would become very costly to make any other changes other than this one side. That is part of what we look at. If it's too costly we agree with the fact you put it where you need to put it cost wise. We said it's approximately 6% which is extremely small substantiality on the variance. Whether the proposed variance will have an adverse effect or impact on the physical environment on the neighborhood. Again, considering the amount of variance it will not have any negative effect. Whether it was self-created, again, we don't feel it has been self-created. The Zoning Board determines the benefit of the variance to the applicant outweighs the detriment to health, safety and welfare of the community. The variance request is a minimum necessary and the variance be granted was made by Conti, seconded by Heuck and carried.
Heuck Aye, Conti Aye, Machelor Aye, Maggard Aye

The next meeting will be April 9, 2020, at 6:30 P.M.

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

Respectfully submitted,



Sandra L. VanUden
Zoning Board Secretary



Norman Machelor
Zoning Board Chairman