

ZONING BOARD OF APPEALS

Town Hall 1375 Ridge Road Lewiston New York
Thursday – May 9, 2019
ZB 2019-5

Present: DeCastro, Heuck, Machelor, Maggard, Muzzi, Attorney Seaman

Absent: Conti

Presiding: Norman Machelor, Chairman

Machelor: I would like to call the meeting to order.

Pledge of Allegiance

Machelor: If the Board would read the minutes of March 14, 2019 and let me know if they are okay.

A motion to approve the minutes was made by Maggard, seconded by Heuck and carried. (2 abstentions)

Machelor: I read this each time we open a hearing. In order for people to get an idea of what the Zoning Board does. 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 to continue the project or denial to prohibit a project as presented.

Public Hearing opened.

Kimberly Houston, 4936 Hillview Court, SBL# 101.16-1-27, requests a variance from the required 9' side yard setback on the south side to be (0) on the property line to allow an addition on an existing foundation currently covered by rubber roofing. The property is presently zoned R-1, single family.

Machelor: I invite the petitioner to speak on his or her project if you would. Please state your name and address clearly for the clerk.

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Kimberly Houston, 4936 Hillview Court. I have an 8'x13' slab that exists on the side of my home. I'm actually looking just to build an outdoor storage, dry storage unit on it and making it esthetically pleasing to match my home.

Machelor: What is under there?

Houston: Under there right now is all my utilities in the basement. It's my hot water tank, my furnace is under there. Right now, it's covered by a rubber roof. I'm not sure when that was put on. That was prior to my owning the home.

Machelor: How long have you been there?

Houston: Almost 7 years.

Maggard: How high up would you take this building?

Houston: 8'

Thomas Sidoti: 8' but up to the peak would be 10'. I live at 4936 Hillview Court also. It would be 8' high walls to a 10' pitch total would be the peak.

Muzzi: Is there an overhang on it?

Sidoti: I would like to give it a 6" overhang. I would like to go to code to whatever the building inspector wants.

Muzzi: So, if you're going to zero right up to the lot line then that 6" overhang would be on your neighbor's property.

Sidoti: I wouldn't put an overhang on that side, maybe 2" because my existing house does not look like that. It's hard to describe, the overhang would be on the peak in the front.

Machelor: You anticipate being 12' in length?

Sidoti: Correct. The slab is actually 12.6" by 83".

Machelor: That slab was there when you purchased the house. I don't know what the zoning things are about that at the time. Anybody have any idea? It's very close to the side yard.

Muzzi: I looked in to it and there was no record within the Town of any permit being built for that. At the time it was just built.

Machelor: You think it was built with the house?

Heuck: Yes. It says foundation.

Machelor: And they put it right on the lot line. If you did that you would not be able to walk around that would you?

Sidoti: No, not unless I put two doors. Right now, as it stands it's 18" above the ground that foundation. To walk around it now....

Machelor: You could walk over it but you couldn't walk around it.

Muzzi: In your application you had mentioned that there were similar houses in the vicinity with the same structure? Where are those located?

Sidoti: Creek Road. I don't know the exact address of that on Creek Road. You leave Hillview Court, hang a right, 3 houses up on the left is the exact same house built the exact same year and he has that on his house.

Muzzi: Is it right up to the lot line like yours?

Sidoti: I didn't go in to that that far.

DeCastro: It's the same type of foundation with a shed built on it?

Sidoti: I haven't gone up and looked at it. I don't know if it's a room or what.

Machelor: It's sort of not relevant anyway. The issue is somebody built it like that right up to the lot line and you're stuck with it essentially. In order for us to give you a variance it's a big variance, it's substantial in size because it's right on the lot line.

Sidoti: I was thinking to come off the line with the structure itself so I don't impede that line.

Muzzi: I agree with Mr. Machelor, normally you would have to be 10'-15'. You are asking for zero which puts you in a whole different situation. The substantiality of being at zero is I think in my view the most difficult part to your whole application. It's just not a good thing. You would have to be fire rated at that point and I think another big thing is if your neighbor ever wanted to build on his side, he has to be so many feet from that structure as well. It's going to impede what they may want to do in the future because of that.

Sidoti: The structure is already there. That foundation rises. I sent you pictures.

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Muzzi: You understand the fire rating and how because you would have an actual physical structure there. It would impede what happens next door to you too. That's another substantial element to this.

Machelor: These pictures that you gave us. This is your neighbor on the other side and that's his shed.

Sidoti: That's his structure. I don't know if that was up to code when that was built either.

Machelor: Is that the same type of structure?

Sidoti: His isn't on a foundation. He has a slant roof. I want to make it as esthetically pleasing. I want it to match and look like it belongs with the home.

Maggard: You wouldn't have any walk space between both of those structures basically. Either his or yours.

Houston: There is yard between it. It's his yard. Yes, there is room between his structure and where our slab is. Right now, there is a fence there. There is a good 1.5'.

Muzzi: Is that your fence?

Sidoti: Yes, it was existing with the house.

Muzzi: Is it on your property?

VanUden: Some is on the neighbor's property.

Maggard: Why would you want to put a structure there?

Sidoti: Why would I want to put a structure there? My utilities are underneath it. If that roof fails then I'm out my furnace, my hot water tank and the electrical that's down there. I gave you a picture of everything that's located down there. If that fails, I'm out.

Machelor: One of the things we consider when people ask for relief, is there some other way you can achieve your goal besides the plan that you presented? Of course, one other way is to cover it somehow else without building a building on it and putting a shed somewhere else on the property that's permitted.

Sidoti: Say you put decking on it and then all of a sudden decking shrinks, it's wood you have gaps, then I'm going to contain the water still on to the top of that roof.

Muzzi: You would have to maintain it as it's been maintained all these years and has worked basically right?

Sidoti: I get water in it at this point. It's not a good thing. Just the damage it can do if that gives. I'm out a hot water tank a furnace.

Muzzi: It was that way when you bought the house you said?

Sidoti: Yes.

Muzzi: I would agree with one part of your application that the difficulty was not self-created. This is one of those rare situations where the lay of the land either causes it or something and you have that something. You have inherited that. Usually that's another mountain to climb. Luckily that's the thing. I would tell you for me the substantiality is too much at least from my point of view. Would anybody else have anything to add about that?

Maggard: I think it is too. I think there are other ways of preventing that from giving you a problem on down the road rather than build an 8' high structure.

Sidoti: How would that be achieved and esthetically pleasing if you took down a fence and you're looking in to someone's side yard and you see a foundation coming up this high and then you see nothing but rubber.

Machelor: We can't recreate what already happened.

Muzzi: It's non compliant right now. To increase the non-compliance of it is a tough mountain I must tell you.

Machelor: It so happens that your neighbor would have come tonight to speak against this but he couldn't be here so he sent a letter to us which I'm going to read in to the record. If that's all you have to say wait and we'll read that in to the record.

Sidoti: Can I comment after that?

Machelor: Yes, you could. Letter: My name is Mike Fitzgerald; I am a resident of 4940 Hillview Court for over 32 years. With regard to SBL# 101.16-1-27, and the request of a variance of a storage shed to be built and brought to the property line I have a list of questions and concerns since I will be most impacted. What are the dimensions? What color? What will go in to this shed? Combustibles, flammables? They have very large dogs, bull mastiffs. What is to prevent them from using this as a dog house or get larger dogs in the future. What happens to the current red fence already in place? How many entrances; what direction? This will drastically reduce my vision from my back yard looking towards the front. To my knowledge there was

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never a structure built on this space before. This will drastically reduce my resale value to my home with the proximity of this storage shed. This also would impede any potential addition that I would like to do at any time in the future. Please advise any other variance through the Town that a structure was built and brought to the line. What are the fire codes for this potential new structure? Our properties are already close as it is. Unfortunately, my wife and I will not be able to attend this meeting on the 9th as we will both be out of town. I do wish my questions be heard and recognized in advance of any decision. Regards, Michael Fitzgerald.

Houston: I would like to say there is no bull mastiff. The bull mastiff has died unfortunately. I knew that letter was probably coming because we do have issues because they have cameras pointing to that side of my home, on our home.

Sidoti: You can see the cameras pointing at my property and there is a camera that he put purposely pointing at my swimming pool in the back yard.

Houston: I knew that it was going to be an issue.

Sidoti: The police have been notified about it. You can see them in the pictures.

Maggard: I don't see any swimming pool on this? You have the shed here but no pool?

Sidoti: I'm saying he has cameras pointing, he has one camera pointed.....the pool was just put in 2 years ago.

Maggard: When was your shed put in?

Sidoti: I don't have a shed, it's gone.

Machelor: Anyway, whatever your relationship with him, he's raising some legitimate questions which of course we've already raised ourselves. One of the things we always ask is what you want to do going to be a detriment to the neighborhood. Of course, when you ask the neighbors and they say yes then you have to take that in to consideration too.

Sidoti: Also in to consideration they have to take is that when I purchased this home for \$70,000 and totally redid this home from top to bottom so far. I increased the value of their home. The home was a wreck when I bought it.

Machelor: We don't know that. Are there any other questions from the Board? Do you have anything further?

Houston: No.

Machelor: Thank you.

Public hearing closed.

Machelor: Are there any additional questions for the petitioner? Would somebody like to make a motion?

DeCastro: I have a question or two. Should this shed or what have you be built would you have to take the fence out in order to build it?

Houston: We don't have to but we probably would because the fence is not esthetically pleasing.

Sidoti: I would leave the fence at the time of construction because it's only a straight wall. Then I would put my wall up. Eventually if I do get it, I would love to take that fence down and get rid of the fence and make it look nicer.

Machelor: Every time you walk by that with your neighbor sitting there every time you walk by your shed if you took the fence down, you're going to be walking on his property. The fence is on his property now.

Sidoti: If I took down the fence.....

DeCastro: I thought they had a tough enough time without this letter but some of the stuff in the letter is valid and some of it has no relation. We don't care whether they get new dogs. I love dogs, get as many as you want. The fence is going to be an issue because it is on his property. Given that the relationship between you two is already negative, even if we approve this you would have to work with your neighbor and accommodate him or her in order to do some of what you need to do to get it built in the first place. I just think.....

Sidoti: Personally, I can build that structure without stepping an inch on his property.

Houston: It's already in the fenced area.

Sidoti: One I put up the back wall and lean the back wall up.

DeCastro: Would you be willing to accommodate the neighbors wishes? Would you put 2 doors and go right through the shed?

Sidoti: If I had to yes.

DeCastro: That's all of my questions.

A motion to deny the variance request was made by Muzzi, based on the substantiality, based on the safety that having the structure on the lot line may cause, seconded by Maggard,

Heuck: Being that it's already there that foundation and you're going vertical, you're not going horizontally, you're going up, why would it be, it's already there, you already have a structure that is above grade so therefore if you're going vertical it would be in compliance with what's already there.

Muzzi: It's non-compliance.

Heuck: But it's already a structure that's already present.

DeCastro: It has been there since the house was built. If we are going to talk about value to the neighborhood, this is a real eye sore. I think the addition that a nicer structure could be put there and help out the neighborhood believe it or not. I think it's less of an eye sore. I think they have a better time adding to the value.

Heuck: It is such a mixture down there of different structures.

Machelor: I think the benefit you're looking for could be achieved by other means other than putting that building on there. That's my basic idea. It is substantial. If you need that type of structure you have a yard to put it in which seems to be the reasonable answer to putting it there.

Sidoti: The shed is not.....the answer is to cover the utilities that are lying underneath that foundation right there. So, what other means, if you put a wood deck, the wood deck shrinks and you will get water down there and it's over.

Machelor: That may be. I'm not an engineer so I'm not going to say yes, I'm only saying to you that I think there are other ways to protect that place other than putting a building that's 10' tall at the peak on it next to the property line. If you need a shed you need a shed. If you'd had come to us and said I need to cover this concrete pad you wouldn't even be here. You would have just done that on your own. We wouldn't even be talking to you. You could have put a peak roof; you could put a roof and cover it with shingles or whatever.

Sidoti: Esthetically how would that look in your neighborhood? If you had a foundation coming up 18" and then you put a peak roof off it?

Muzzi: You could put arborvitae up too and it would hide everything. There are natural solutions to this.

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Sidoti: The one solution that's not you're not looking at are the utilities that are underneath that. That is the main reason. It's not about having a shed up. It's to protect the utilities that are below that in this house. It's not to say this is a shed I want a shed. I want something that's going to be permanent, that's going to fix the problem and I won't have to worry about water pooling, no heavy weight sitting on something flat that has the brains basically of that house underneath it.

Machelor: What you applied for is not that. What you applied for is to build an 8' tall shed next to your property line. That is what you applied for. That is what is really before us, not to engage you and say we think you could.....I'm just saying we think you could probably solve your problem without putting an 8' building there.

Sidoti: How can I apply for something? What would I apply for?

Muzzi: We don't get in to that at all. We are just looking at what you want today and that's a structure.

Machelor: You wouldn't have to apply to us. You can put a rubber membrane on there. We can't get in to the engineering of it. Does anyone have anything further?

Tom Seaman: I would like to add to make sure you add to your motion that you've considered the basic standard which is does the benefit of the variance of the applicant outweigh the detriment to the health, safety and general welfare of the community. Your answer was that it does not which is why you made your motion for the sake of the record.

Muzzi: If you could add that on my motion that would be great.

DeCastro: Can we answer one question for them before we go? You asked if you could appeal? You couldn't appeal this but you could put in another variance request for a different structure. It wouldn't be the exact specifications that you have now but if you tweaked it in some way you could come back

Sidoti: Off the record.....

Muzzi: We can't....we don't get in to that. You would have to get a contractor.

Machelor: We can't do off the record.

Sidoti: What kind of structure, what are you going to do without putting a peak roof on it and putting it up? There's nothing that's a permanent solution. If you put a membrane, you're only going to get so many years out of a membrane. I can't take down the fence because it's an eye sore.

Muzzi: I don't think there is anything that is permanent sir as far as construction goes. Nothing is permanent. You had a solution for all these years. I think it would behoove you to look for a creative solution. We've said no to the structure that you have asked us to look at. There is a motion about the structure that we can't go outside those parameters. It's not before us. We surely can't tell you the solution to your problem.

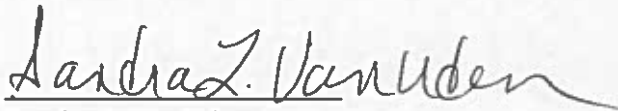
Motion to include that the benefit of the variance of the applicant outweighs the detriment to the health, safety and general welfare of the community, motion carried. (1 nay)

Heuck Aye, Muzzi Aye, Machelor Aye, DeCastro Nay, Maggard Aye

The next meeting will be June 13, 2019, at 6:30 P.M.

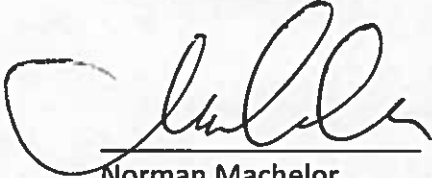
A motion to adjourn was made by Heuck, seconded by DeCastro and carried.

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 May 9, 2019, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following application:

Kimberly Houston, 4936 Hillview Court, SBL# 101.16-1-27, requests a variance from the required 9' side yard setback on the south side to be (0) on the property line to allow an addition on an existing foundation currently covered by rubber roofing. The property is presently zoned R-1, single family.

Information concerning this request is 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
#N247676

5/2/2019