

ZONING BOARD OF APPEALS

**Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – October 10, 2019
ZB 2019-10**

Present: Conti, DeCastro, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

A motion to approve the minutes of September 2019, was made by Heuck, seconded by Maggard and carried.

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

Machelor: Thank you all for coming tonight. If you haven't been to a Zoning Board meeting before the procedure of the Zoning Board meeting is to allow people to speak during the public hearing phase of the meeting. Usually we call the petitioner up first and he presents his case of what he would like to do and so on. After that is finished, we ask anybody that is interested in that case to come up and speak also.

The first item on the agenda was a request from Michael Colangelo, 4992 Callan Drive, SBL# 102.14-1-16, for a variance from Section 360-38A, yards required from the required 50' front yard setback to 24.47' and a variance from Section 360-38B, from the required 13.5' to 5' to allow for construction of a garage. The property is presently zoned R-1, one family residential.

Machelor: Is somebody here to speak on this? Please state your name and address for the record.

Michael Colangelo, 4992 Callan Drive. I want to build a garage out the front of my house and side off my living room. Right now, the house has no garage. I have no other placement for that. I'm looking to get a side variance and front.

Conti: This is the same variance that you request a year ago?

Colangelo: Yes, I didn't know they expire and we took a couple years to kind of think it out and wait for the neighbor because we had a neighbor that we talked to prior to buying the house that would sell us property and he backed out when we bought the property. I got the variance

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a few years ago and didn't realize it expires. Now we are ready to do work so I re-applied. It's a little different than before but about the same foot print.

Heuck: What do you mean a little different?

Colangelo: Before I think if you look at the survey, I was trying to not block one of the windows in my front living room. I'm still asking for the same side setback.

Heuck: That has not changed?

Colangelo: No that has not changed. The picture on the survey is a little different this time around.

Machelor: Before it was on the north side?

Colangelo: No, where I wanted to build and buy property from, that is the north side, but going over to the north side yes.

Conti: Back on May 15, 2017, we granted a variance for you with certain conditions that changed what you originally asked for? You are going back to what we originally refused?

Colangelo: I wasn't sure if I should apply for what you would allow or if I should try....I didn't know how to go about doing that. I didn't know if I should ask for what was approved?

Machelor: I was reading it this morning and it seems to me it was bigger than it was last time.

Colangelo: Before I was trying to not cover one of the windows of my living room. But now the footprint of that, I talked to my wife about it and she's okay with the size of it, the footprint will be bigger than what I asked for before but I think the setbacks were the same.

Machelor: How wide is it?

Colangelo: The garage itself with a front porch would be 20 some odd feet wide depending if I can get it to the 5' or not. From the front of the house forward I was looking for 28' coming forward.

Machelor: Let's talk about the side yard first. How wide will the garage be if you build like what you want? Is it a two-car garage?

Colangelo: It would be two cars wide.

Heuck: You're saying 28'x28' is that correct?

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Colangelo: I think that's....

Heuck: That is what you put on your application.

Maggard: That's almost a three-car.

Conti: 20'x20' is two-car.

Colangelo: From that 5' to my front porch it will be 26.5' and if I cut in to the porch a little bit it would end up being 28'.

Machelor: That's a pretty big garage. The problem is....

Colangelo: For storage and cars and things are getting bigger these days.

Machelor: People can build a big garage if they like but in your particular case the fact that you're building it so wide gives us the problem that it's so close to the side yard. In other-words just for discussion, if it was only 20' wide you would have 13' to the side yard. But now you want it to be 28' wide and then you're only 5' from the side yard.

Conti: 5' is very substantial for a variance.

Maggard: Yes, it is.

Conti: One of the things that zoning does is to try to keep the character of what they originally wanted the Town to be. You get in to the City type situations where everything is really close. We try to avoid that with the zoning in Lewiston.

Machelor: In addition to that you're also reducing your front side by 25'?

Colangelo: It would be 28' if I got this variance.

Machelor: Why do you need a 28' deep garage?

Colangelo: My truck is 19' long and with tools and access to get in to my house, I want some room to park my truck and have room to get around it. My wife also has a larger SUV. You put those together and tools and other things the space disappears fast.

Machelor: I know. That is also a lot. You're asking for about 50% of it. As soon as you get to the 50% mark that's substantial. I have a suburban, it's 18' long. It fits.

Colangelo: How deep is your garage?

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Machelor: 22'. It's tough, so you have at least an extra 5' in front. You have an extra 8' on one side and an extra 5' on the other side. If you were to think about this again and come back with ...we might be more liable to grant it.

Colangelo: Would there be any way to go back to the way it was originally approved?

Machelor: I don't have that paperwork in front of me. I think someone has it.

Heuck: Michael, so you're saying you're going to come over a little bit more inside the house? In other words, before you didn't want to cover up that one window but now, you're going to come over?

Colangelo: Yes.

Heuck: If you did that, you wouldn't have to go as far over to the side yard setback if you reduce the size from 28' to 25'? Do you see what I'm saying? 25' gives you the room and therefore I think it would be minimal for the amount of side yard setback that you would be asking for.

Colangelo: The way it was approved last time, if I do the measurement I can only go so far to my porch because the water line and gas line is there. If you were to grant what was originally granted a couple of years ago, I would still have to be so far from that line with gutters and all that stuff. It probably would be 21' wide.

Machelor: It would be a lot easier to approve what you had before.

Conti: Before showed a front setback of being reduced from 52.47' to 32.47'.

Colangelo: That would only give me 20'.

Conti: The side right now 13.5' going to 9.68'. That's what was granted.

Colangelo: Even that would be better than nothing maybe. It's not as big as I would like but it's something I can use still.

Machelor: I think at this point you have an option to say to yourself, is this going to get approved or not depending on the substantiality of it. If you were to think about it again knowing what you know now, would you want to come back and live with what you had before or would you like to think about it again and make some difference?

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Colangelo: Even if you were able to grant the side setback from 9.68' and then maybe instead of 32.47' could we go 28'?

Conti: No. We were pretty generous on this one 1.5 years ago. That was already going beyond what we do a lot of times. I think if you are willing, we could probably set a motion out to go back to what you originally, which would give you a year from now to build again, if it got approved.

Colangelo: I would be willing to take that.

Seaman: If you want to do that I think you should make it clear for the record just that you are going to amend your application to ask for the setbacks that you had been given May 11, 2017 after you made your original application to a front setback of 32.47' and a side yard setback of 9.68'. Do you wish to make that amendment to your application today?

Colangelo: Yes.

Seaman: That's what we will have in front of you today then. If there is going to be a motion on it, I would ask that you go through the considerations.

Machelor: Thank you. Does anybody have any questions? Does anyone else wish to speak to this matter in the audience?

Open meeting closed.

A motion whereas the Zoning Board of Appeals finds that pursuant to the prior discussions that the benefit to the applicant outweighs the detriment, health, safety and welfare of the community, to approve the requested variance with the following conditions as Mr. Colangelo has accepted a front setback of 32.47' and a side yard setback of 9.68', was made by Conti, seconded by Maggard and carried.

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

The next item on the agenda was a request from Paul Christieson, 446 Riverwalk Drive, SBL# 73.18-1-64, for a variance from Section 360-194 A2, Fencing and walls, from the maximum height limit of 6' to 8'. The property is presently zoned R-1, one family residential.

Public hearing open.

Machelor: Is there anyone here to speak to this matter? Please come forward and state your name and address.

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Amy Miller Christieson, my husband Paul and I own a single family at 446 Riverwalk Drive.

Machelor: What would you like to do?

Christieson: We would like to heighten our fence from 6' to 8' for privacy purposes. We've lived in our property since 2005. We were one of the first homes built in the Riverwalk subdivision. Subsequently French Landing was built behind us recently and the elevations of the two properties are very different so our home is set up quite high and the home next door to us and French Landing are a few feet lower. A 6' fence was installed but unfortunately doesn't create the privacy that we were hoping for. When we are standing on our back patio you can basically see right over the top of the fence. We are requesting an additional 2'.

Machelor: When I read this this morning, I thought maybe that I got the wording wrong. What you are saying is that your property is higher than your neighbors?

Christieson: Yes.

Machelor: That means your neighbors would be lower than you and you would have to look up right, if they were standing at that fence?

Conti: If you were here, you're not looking down in to their yard you're looking down in to the yard so a 6' fence would block you looking down. I thought the wording was wrong too, that they were higher than you, so by putting a 6' fence you would still see them.

Christieson: We can see each other actually because the way the patios are, they face one another so if the neighbor is standing on his patio, he can see over in to our yard and if we're standing on ours, we can see over in to his yard.

Heuck: Is that a concrete patio?

Christieson: It is a concrete patio yes.

Machelor: It's not an elevated patio?

Christieson: There is a step due to grading because the way the back yard was graded on that property, we had to have a step-in order for it to be safe.

Machelor: There is a reason why generally speaking the Code calls for only 6' fences, not 8' fences. The fact that when we talk about self-creation, self-creation means that you decided to have an 8' fence, not that one is necessary from.....

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Conti: This wouldn't be a self-created problem for her because when she built, she was the only house there. They built at different elevations around her so that's not a self-created hardship. She was there long before French Landing was.

Christieson: We had the forest behind us for the past 13 years.

Conti: At French Landing they decided to do a different elevation which screwed things up.

Machelor: It would be more reasonable to say they were higher and that required a higher fence but they are lower. How far back from your house is this fence?

Christieson: I would say it's probably 15' from the edge of our patio to the back of our yard.

Machelor: It doesn't show here. It's more like 40'.

Christieson: From the back of the house or from the back of the patio?

Machelor: From the corner of the patio or the corner of the house.

Seaman: Is it depicted on the survey that you submitted?

Christieson: I don't believe so.

Seaman: The patio is not shown on the survey.

Machelor: Can you come up here and show us where your patio is?

(Looking at survey)

Christieson: Our patio actually goes all the way around and goes almost to the edge of the property. It's a round edge and goes all the way around.

Heuck: You have a catch basin back there that drains.....and that's back further from that so....

Machelor: There is no fence there now?

Christieson: There is a fence that we put up on the property line because we knew we couldn't go to 8'. We would like to extend it to 8' if possible. The other thing to consider is from the inside of our home the back windows, our whole house has windows in the back so because of our elevation even from the inside of our home we're just looking right in to the neighbor's back yard because that is elevated even higher than the patios. Outside is one thing but inside is a concern as well.

Maggard: You are higher than the neighbors?

Christieson: Yes.

Seaman: Does your property itself slope?

Christieson: Yes, it certainly does.

Seaman: I think the issue here is that your property slopes. That's where logically it doesn't make a whole lot of sense that the person behind you is lower than you, that you somehow need a higher fence.

Christieson: I understand. I do see the logical problem.

Seaman: I think that it's explained by the fact that you have a sloping back yard.

Christieson: We do have a sloping back yard.

Machelor: Do they also have a sloping back yard? Is that the drain area?

Christieson: It is the drain area.

Heuck: That is part of the problem they had building French Landing.

Christieson: We have a multitude of issues, we have water issues, we have privacy issues, but we are here to talk about the privacy issue.

Seaman: Have you considered other possible ways to achieve the privacy that you are seeking?

Christieson: We certainly did. We actually already tried to achieve it by using plantings, natural plantings. It helps a little but it really doesn't provide us the necessary privacy all the way across. Yes, we did try that.

Seaman: Did you put arborvitae back there?

Christieson: We have arborvitae on our property. We actually had a professional landscape architect come out and come up with a design for us so that we could try to create some natural landscape that would give us the ability to give us the privacy but it's just not going to fill in the way we want to fill it in and to cover that back side of that property because our lot is so wide we would have to have 100 arborvitae to cover the back side of the property to create the privacy. We did put up a shed. We had the landscape architect come out and put some

plantings in and then we had a shed put in in the corner and that created a little bit of privacy for us. We lived with it for a season to see if we could live with it without putting up a fence but we really felt like we were still lacking the privacy after having the forest behind us for that many years. Then having the 6' does make a huge difference. There is no question it makes a great difference, but it doesn't help us from the inside of our house and when we are standing on our patio.

Machelor: You say you have a 6' fence?

Christieson: Yes sir.

Machelor: How would you extend it? Are you going to put up a new fence?

Christieson: No. It would be an extension on the top of the fence. It would be an extension of what the fence actually looks like today.

Conti: Professionally done?

Christieson: Yes.

Machelor: Is it solid?

Christieson: It's a vinyl fence, yes.

Machelor: You can't see through it?

Christieson: We would like it to be solid. Here is a photo from one of the neighbors if you would like to see it. That is the existing fence and you can see the shed that we put in and you can also see the privacy planting that we had put in last year.

Machelor: Is this fence the gray one yours?

Christieson: Yes.

Machelor: It goes all the way across here and the white shed.

Christieson: That is our next-door neighbors shed. That is from their vantage point. We're requesting the extension on the fence just to our property line, not beyond our property line. The fence goes beyond the property line. We worked with our neighbor to come up with a solution. We are only requesting the 8' to our property line.

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Machelor: Any other questions? Would anyone else here like to speak to this issue?

Peter Henderson, 440 Rivermist. I just want to say I have no objection to a fence going higher. If you look at that photograph there, on the far-left side of the photograph you see just one little piece of fence. That is the view from my back porch. Whether that's 6' or 8' it doesn't matter much to me. That is Joe's house. He is the one that put up the fence. You're looking at a view from my back porch. I'm not a fence guy but I have no objection to what these folks want to do. The far-right side of the photograph.....

Machelor: Who's fence is this? Come up here please.

Henderson: This is the opposite side of the yard. This is the closest part of the fence and then there's a yard and then this part of the fence is the other side of Joe's yard.

Machelor: Is your whole property fenced ma'am?

Christieson: My property is not fenced but the fence goes around my next-door neighbor's entire property.

Henderson: That is Joe's fence.

Machelor: Okay, thank you.

Henderson: My only objection is that the long part of the fence that you're looking at on the right side of the sheet, that is our view off our back porch. That certainly has not done anything to enhance our view off the back porch. I know there is nothing I can do about it but I know the stated reasons that people want privacy. I can't see Joe's house; he can't see my house from my back porch so I don't get the point about having a 6' fence directly behind my back porch. I know Joe probably spent a lot of money on the fence but from my standpoint it's kind of an eye sore frankly.

Conti: That has nothing to do right with what she's asking for as for as the 8' fence?

Henderson: I just came in to say it, I don't have any objection to that little fence on the left going up to 8'. I just wanted to vent a little bit about the fence that's in back of my house. I don't like it.

Machelor: Does anyone else like to speak to this?

Public hearing closed.

Machelor: Any questions from the Board?

A motion to grant the variance for an 8' fence was made by Heuck, seconded by DeCastro and carried.

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

The next item on the agenda was a request from Ronald Ciamaga, 499 Meadowbrook Drive, SBL# 115.07-1-16, for a variance from Section 360-38B, Yards required, from the required 11.34' side yard setback to 8.2' to allow for a generator. The property is presently zoned R-1, one family residential.

Ronald Ciamaga, 499 Meadowbrook Drive.

Machelor: What would you like to do?

Ciamaga: I would like to install an emergency generator. This past spring, I went to Arizona. I have a place there. I had a broken pipe in the attic. It cost over \$100,000. of damage in the house. I spent a better part of the summer with contractors trying to put it back together. I know my application says tens of thousands but since I submitted that the insurance company has given me a final count. Much to my surprise it was over \$100,000. The house has no basement in it. Venting is run up through the walls to get from the furnace room over to other parts of the house. Unfortunately, part of it went through an unheated attic. That copper pipe burst. My family found it some days later and it ruined about 30% of the house along with a \$750. water bill. I really can't live with the idea of not having the heating system protected while I'm gone. I can't go through this again. What I'm asking for is to place a generator on the side of the house. Unfortunately, I'm going to need about a 3.1' variance. The side of the house, I have a picture that will describe a lot here if you would like to see it.

Machelor: We have your site plan.

Ciamaga: The site plan unfortunately doesn't show the house is built on 2 different elevations. On the east side of the house there is a 5' variance between the top level and the bottom level. That variance is made up by a natural stone fence and 4 levels of garden. That transitions in to a flag stone patio which in order to get to a spot to put a generator in our back yard would have to be destroyed to probably the tune of 25-30'.

Machelor: Is this a natural gas generator?

Ciamaga: It is. It's a pretty small thing. I think about 3' long and roughly 30" wide, 27" high, something like that.

Machelor: Your point is that it would be difficult to put it somewhere else?

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Ciamaga: I think so. The fact that my house does not have a basement and none of my neighbors to the west do as well because we are at a little bit of a lower elevation. What I see in my back yard is exposed stone in one spot leads me to believe that the reason there is no basement is the house is built on a stone foundation. In order to try and put it back there and then bury both the gas lines and the electric lines would be horribly expensive. I just wouldn't do it. I would be tempted to just sell the house rather than trying to do something like that.

Machelor: You have almost 13' to work with right?

Ciamaga: Yes, I believe so. My contractor submitted the application. I think that's what he came up with.

Machelor: Questions, Marge?

Maggard: Does your neighbor know that you are going to install a generator if the Board approves it?

Ciamaga: Yes.

Maggard: Do they also know that at least once a month it's going to making some noise checking on whether it's going to go or not?

Ciamaga: I'm on good terms with my neighbor. I mentioned that to him; he did not seem to have an issue with it. It also is a pretty quiet unit at 67 dba. It's not one of these cheap generac things. This is Kolher based engine and the darn thing is pretty expensive. I would expect it to be quiet.

Conti: Your neighbors were notified anyways of the hearing. They would have been here, maybe they are?

Ciamaga: He is asking to bring stuff over and plug it in. I said I don't think I can do that.

Machelor: I have to say my neighbor had this happen to her last winter. She has been working on it. I don't think she has actually gone in to the house to live there since the winter and now we are in October. The same thing happened. It was discovered there because the water was so much it filled up the sewer pipe in the swale next to her house. It's a difficult thing. Does anyone else in the public want to speak to this issue?

Public hearing closed.

Machelor: Any more questions from the Board?

A motion to approve the variance request was made by DeCastro, seconded by Conti and approved.

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

The next item on the agenda was a request from Robert Smith, 735 Hillview Court, SBL# 101.12-3-31, for a variance from Section 360-38 A (1) Yards required to allow for a covered front porch to be 8' closer to the front property line. The property is presently zoned R-1, one family residential.

Machelor: Is there some here to speak to this? Please state your name and address for the record.

My name is Jay Wendt, I'm the contractor. I'm supposed to do a front porch for his house.

Machelor: Are you Mr. Smith?

Mr. Smith: Yes.

Machelor: Do you give permission for this?

Smith: Yes.

Machelor: Tell us what you want to do.

Wendt: There was a Unit Step on the front of the house at the front door. It came out roughly with the stairs about 8'. It had railings on both sides. It's been falling apart. They took it all down and asked me to come and build them a new one and we talked to Tim about it and he said we would have to apply for a variance because the setback from the road, the house is a little under 50', 49.9'. We're encroaching even closer. Our plan is to come out 5'x10' and then the steps off of that. I don't think we'll even be out that 8'. It will be close. We're also going to put a roof over that section, just the deck part to match the front peak of the house.

Machelor: You're going to build a 5'x10' covered porch?

Wendt: Yes.

Conti: The steps come towards your front setback. Were these numbers of 49.91' going to those 8' steps or are they going to the house?

Wendt: To the house.

Conti: The stairs are part of the covered porch?

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VanUden: It's still part of it.

Machelor: You would be roughly 40' from the front setback instead of 50'?

Seaman: Are you saying the previous steps that were previously there came out 8' from the house? You are proposing to put this within the same frame work?

Wendt: A little bit wider though to make it look good with the house.

Machelor: Wider but not deeper essentially.

Wendt: Yes.

Machelor: Anyone in the public that would like to speak?

Public hearing closed.

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

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

Seaman: Before we close tonight, I just wanted to address the Danielewicz matter that was left open, the public hearing on the Danielewicz matter was left open at the last hearing. I just want it on the record today that if anyone is here to address the Danielewicz matter it's been postponed until the following date which is November 14, 2019, at 6:30.

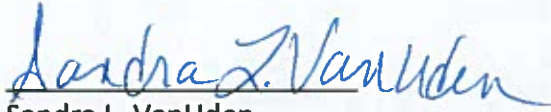
Conti: Do we want it on the record that they are pulling the use variance and just going with the interpretation.

Seaman: We can put it on now that they have submitted paperwork that they have withdrawn the application for the use variance and are proceeding only with the interpretation application. We will address it again next time I'm sure. I just wanted to make sure the record is clear in case there was anyone here.

The next meeting will be November 14, 2019, at 6:30 P.M.

A motion to adjourn was made by Heuck, seconded by Conti 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 10, 2019, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Michael Colangelo, 4992 Callan Drive, SBL# 102.14-1-18, requests a variance from Section 360-38 A, Yards required, from the required 50' front yard setback to 24.47' and a variance from Section 360-38 B, from the required 13.5' to 5' to allow for construction of a garage. The property is presently zoned R-1, one family residential.

Paul Christieson, 448 Riverwalk Drive, SBL# 73.18-1-84, requests a variance from Section 360-194 A2, Fencing and walls, from the maximum height limit of 6' to 8'. The property is presently zoned R-1 one family residential.

Ronald Ciomaga, 499 Meadowbrook Drive, SBL# 115.07-1-18, requests a variance from Section 360-38 B, Yards required, from the required 11.34' side yard setback to 8.2' to allow for a generator. The property is presently zoned R-1, one family residential.

Robert Smith, 735 Hillview Court, SBL# 101.12-3-31, requests a variance from Section 360-38 A (1) Yards required to allow for a covered front porch to be 8' closer to the front property line. 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
#N257157

10/3/2019