

TOWN OF LOCKPORT
ZONING BOARD OF APPEALS
May 26, 2015

PRESENT: Kevin McCabe
Donald Jablonski
Kevin Roth
Tim Lederhaus, Chairman

ALSO PRESENT: Brian Belson, Senior Building Inspector
Jane Trombley, Secretary
Michael Norris, Town Attorney

ABSENT: Will Collins, Alternate
Elaine Sobieraski

The May 26, 2015 Zoning Board of Appeals meeting was called to order at 6:00 pm by Chairman Lederhaus, who then led the Pledge of Allegiance.

MOTION made by Member Jablonski, seconded by Member McCabe to approve the March 24, 2015 minutes. 4 Ayes, 0 Nays, Carried.

CASE #1 **4429 Lake Avenue – 95.02-2-47 – Ryan & Jill Keys** – Requesting an area variance to construct a 24 x 28’ detached garage, closer than the required 70’ front setback. Mr. Keys stated they live on a steep hill on Lake Avenue, but there is another entrance to the home from Heather Drive and they would like to build a detached garage closer to the home.

Member Jablonski asked if the Heather Drive driveway has been for ingress and egress. Mr. Keys stated yes, as it is less dangerous. Chairman Lederhaus asked if the garage will match the home and Mr. Keys stated yes, vinyl siding that will match. Mr. Jablonski asked if the carport is coming down and Mr. Keys stated not right now. However, Senior Building Inspector Belson pointed out that the carport must come down if the new accessory structure is built.

Member McCabe asked how long the Keys have lived there and Mr. Keyes stated 2 years. Member Jablonski asked if the garage will be in front of the trees and Mr. Keys said yes. Chairman Lederhaus asked if the Lake Avenue driveway would be eliminated and Mr. Keyes said no.

Member Jablonski asked if they will hire a contractor, so there won’t be issues like water runoff onto neighboring properties. Mr. Keys stated yes.

Chairman Lederhaus opened the Public Hearing.

David & Mary Latta of 6525 Heather Drive stated they have a raised ranch and have lived next door to the home for 25 years and the window and deck that they look out from has a nice view, and that they would now have them looking at a garage. Mrs. Latta doesn't want the driveway running all along their backyard and feels the snow will be pushed up against their fence and may cause damage. Mr. Latta stated the Keys are nice neighbors and he doesn't have a problem with them, but someone else might not maintain the property and will make it look like an alleyway. Mrs. Latta feels it will affect the value of her home and wants to know if the garage could be moved back. Senior Building Inspector Belson stated, no, it is not required to be moved back and emphasized that the applicants are here solely for relief of the front setback requirement.

Hearing no further comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Jablonski, seconded by Member Roth, to grant the requested area variance to Ryan & Jill Keys at 4429 Lake Avenue using the balance test, based on:

1. The requested variance will not create an undesirable change in the character of the neighborhood or be a detriment to nearby properties;
2. The benefit sought by the applicant cannot be achieved by any other feasible method;
3. The requested area variance is not substantial;
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and
5. The difficulty is not self-created.

4 Ayes, 0 Nays, Carried.

CASE #2

5047 Wilson Road – 96.00-2-16 – Michael S. Hare – Requesting a use variance to construct accessory buildings without a principal structure. Mr. Hare presenting. Mr. Hare presented a document, signed by all his neighbors stating they are all in favor of what he is doing, except for one that is out of town, but Mr. Hare stated he spoke with him and he doesn't have a problem with it either. Mr. Hare stated the property was a mess and he is clearing it up. He has taken 250 tires off and 6 dump trucks of garbage. Vandals have set his woodpile on fire and done damage to his tractor.

Member McCabe asked what the building will be used for. Mr. Hare stated one building with a canopy to hold his 100 cords of wood and the other 32' x 42' located 300' off the road, for equipment. Mr. Hare stated he has 20 acres and the Board approved the Varallo's a few years ago and it is about the same thing.

Senior Building Inspector Belson stated that wasn't the same, Mr. Hare's plans show cabins and tree houses.

Chairman Lederhaus stated there are things the Board needs to know such as, is a home going to be built. Mr. Hare stated yes, within the year, but he can't leave his equipment there without buildings as it will be damaged. Senior Building Inspector Belson pointed out that construction equipment would not be an approved use.

Town Attorney Norris asked what the purpose is for the land. Mr. Hare stated he plans to live there, plant fruit trees and build a greenhouse, and it will be gated. Attorney Norris stated that the requested variance is a use variance, not an area variance.

Member Roth asked if Mr. Hare will be running a business on the property. Mr. Hare stated maybe down the road.

Senior Building Inspector Belson stated Mr. Hare actually has 2 parcels, one of which is zoned residential, that Mr. Hare has come to the Board for previously that would need a sprinkler system installed, and the other lot is zoned Agricultural/Residential, and a recommendation had been made to Mr. Hare to combine the 2 parcels. Mr. Hare stated he wanted to see what would happen to his taxes if he joined the parcels and was told it wouldn't be much change.

Discussion by the Board ensued as there were concerns about having numerous proposed accessory structures on the parcel without a principal structure.

Senior Building Inspector Belson pointed out again that the map and request submitted by Mr. Hare has numerous structures including cabins, tree houses, storage facilities and decks and that Mr. Hare has had discussions about future business operations on the premises which are not currently permitted.

Hearing all these concerns, Chairman Lederhaus suggested that the Board permit Mr. Hare to construct one accessory storage structure not to exceed 40' x 50' prior to construction of a principal structure and that a principal structure must be constructed on said parcel or the adjacent parcel with the merger of lots within 2 years. Mr. Hare consented that this would be acceptable.

Chairman Lederhaus opened the Public Hearing. Hearing no comment, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Jablonski, seconded by Member McCabe to grant a use variance to construct one accessory building not to exceed 40' x 50' without a principal structure, due to an unnecessary hardship based on:

1. That the applicant cannot realize a reasonable return without it;
 2. The alleged hardship is unique as it does not apply to a substantial portion of the district or neighborhood;
 3. The requested variance will not alter the essential character of the neighborhood;
 4. The alleged hardship has not been self-created.
- 4 Ayes, 0 Nays, Carried.

CASE #3 1000 Meadow View Drive – 124.03-3-351.1 – HGR Developers Inc. –
Requesting an area variance to construct a single family residence on a lot with 60' of frontage. Attorney Norris recused himself from this case and Attorney Cory Auerbach stepped in for the Town. F. Gerard Hogan, Attorney presenting. Mr. Hogan stated his client has sold a 4.3 Acre parcel adjacent to Lincoln Woods continuant on being able to build a single family residence with only 60' of frontage where 85' is required.

Mr. Hogan reviewed the balance test for area variances that the Town uses.

Mr. Hogan stated even though 85' is required, 60' is not a substantial difference, and will not create an undesirable change as the dedicated road demonstrates there was always intent for a home, there is access for police and fire vehicles as well as water and sewer access, the benefit cannot be achieved by any other feasible method, as the property is landlocked except for the 60' of frontage and there is no other use that would fit in.

Mr. Hogan stated this would not be an undesirable change in the neighborhood or nearby properties and would instead be consistent with the neighborhood, as the road could be extended and several homes could be put in. The lot abuts the dedicated road and the home fits in with the others. Several lots have been approved in the Town without the needed frontage.

Mr. Hogan stated there are no physical or environmental issues, the property is suitable for a single family home and there is nothing hazardous. Mr. Hogan stated there may be drainage concerns, there may be a swale along the south side of the property, he has not done a property survey as there is a contingency, and they are willing to grant all necessary easements to the Town. Senior Building Inspector Belson stated there is already an easement in place.

Mr. Hogan noted that the alleged difficulty may be self-created in that it is all the property that was left over. Attorney Hogan presented his outline and it was received as "Exhibit A".

Member Jablonski asked if the proposal is for only one home. Mr. Hogan stated that is what is planned, but if someone else purchased it, they may want to put in more homes. Chairman Lederhaus stated, but this is for only one home and Mr. Hogan stated, correct.

Chairman Lederhaus opened the Public Hearing.

David Zimmerman of 7209 Woodhaven Road stated all the rest of the residents had to comply with the lot size and is concerned others will come along and want an exception made and he also has concerns about the water as he has water in his backyard at certain times of the year, and this is his chief concern.

Amy Loiacano of 5526 Forest Hill Road stated her property is right behind there, she has been flooded and feels flooding will be an issue. Also Ms. Loiacano stated about 10 years ago she asked for a variance, she needed 100' and feels the Town should be consistent.

Sandra Wahler of 7208 Brookside stated she owns 3 pieces of property there and questions several things, not that someone is trying to build, but to make sure the entire development will be protected. Ms. Wahler stated it was her understanding that this parcel would never be developed as there is not enough property left for the infrastructure. Ms. Wahler felt that when Mr. Hogan said there isn't any other feasible option, that there is. Ms. Wahler stated she was approached to purchase some of her property, and there is also some on the other side of the lot. And also, who will pay for the infrastructure.

Chairman Lederhaus stated the Town won't be building a road there. Ms. Wahler stated she understood that recently this Board had put in a road. Senior Building Inspector Belson stated no, a long driveway only, but the Town did reduce the frontage to 85'. Chairman Lederhaus said that if more than one home was to be built, there would have to be fire hydrants, roads and infrastructure and to have 6 lots it would have to go to the Planning Board for subdivision approval. Ms. Wahler said to quote Dave Miller, there is a major swale there and they already have water problems. A good example is this year the swale was up to the top and came out on Woodmore and Lea. Senior Building Inspector Belson said if there is a water issue, contact the Town to get the ditch cleaned as only so many are done in a year.

Ms. Wahler stated it is her understanding that the property owner would own the swale and would have to give permission to go on it. Senior Building Inspector Belson stated that is not true if there is an easement.

Lynn Wahler of 7208 Brookside Drive asked what the code and criteria are. Attorney Auerbach noted the reason for the Public Hearing is only for the frontage variance and reviewed the Balance test with the 5 factors, including if there will be a detriment to the area and alternatives, and putting them on a scale with each having weight. He reviewed the codes noting people have property rights and this Board is a safety valve to see if the codes cause an undue hardship and explained the procedures. Mr. Wahler asked if there will be a drainage plan before the Town issues a permit. Senior Building Inspector Belson stated no, when less than an acre is being disturbed, it is under the Town code. Mr. Wahler stated someone near him put in a garage and it caused flooding, and feels drainage is a concern.

Ms. Wahler feels there are environmental issues and questions if they have been disclosed. Senior Building Inspector Belson stated yes. Mr. Hogan stated digging was done for testing and there were no environmental concerns. Chairman Lederhaus stated, would the drainage problem be different if there was 85' of frontage instead of 60'.

Sam Vitello of 7257 Woodhaven asked if there is a retention pond on the property now. Senior Building Inspector Belson stated yes. Mr. Vitello questioned if that will be serviced by the Town. Senior Building Inspector Belson stated he will have to check on it, it looks like it is at the north end and would have to have an easement. Mr. Hogan stated they are willing to give easements. Mr. Vitello questions what if the owner wants to fill in the retention pond, or sells the property and the new owner wants to fill it in. He stated he was on the Zoning Board before and the Board members used to walk along the properties to check them out and feels this Board should also, as once the variance is given, you don't know what the next guy might do and everyone will have to pay later on as it's the Town's concern if something happens. Member Jablonski stated he was out there. Mr. Vitello asked if a SEQRA was done and was told it was not required.

Mr. Wahler stated the lot next door to him is 80' and his neighbor wanted him to ask if it is grandfathered in. Senior Building Inspector Belson stated yes.

Jessie Makhija of 7213 Woodmore Court asked who would be responsible if a ditch is filled in. Senior Building Inspector Belson stated contact David Miller.

Cindy MacDonald of 7216 Meadow View stated she lives next door and the pond is about 1/3 of the property, and was told the purchaser can fill it in or do whatever he wants. Chairman Lederhaus told her you cannot build on the easements. Member Jablonski stated he almost fell into it as it is very overgrown and it would be part of the site preservation to clean it out. Ms. MacDonald wants to know if the driveway will be in front of her home, and if the road could be extended. She was shown the property line and picked out her home. Chairman Lederhaus stated there isn't a lot of difference between a road and a driveway. Ms. MacDonald feels there is a lot of difference because of mail delivery, garbage trucks, etc. Attorney Auerbach asked if she is saying a driveway would cause a detrimental impact on her and Ms. MacDonald stated yes. Senior Building Inspector Belson stated mail and garbage trucks would back in and out.

Ms. Loiacano stated it is her understanding that the real estate agent for this property is on the Board, and wants to know if she gets a vote. Senior Building Inspector Belson stated she is not on this Board, she is on the Town Board and recused herself.

Mr. Wahler asked if the Board would please consider tabling this. Mr. Hogan stated the seller will grant easements to the Town and he didn't order the Title documents yet as this is a conditional purchase.

Ms. MacDonald asked if a driveway can be put on a dead end road. Senior Building Inspector Belson stated yes. Attorney Auerbach stated it may require a Town easement.

Margaret D'Amato of 7206 Woodmore asked if they will have to use Town property to get into it. Attorney Auerbach stated that, with limited exceptions, access must be provided from a mapped street, suitably improved pursuant to New York Town Law 280-a, in order for a building permit to be issued. Ms. D'Amato questioned accessing Town property and Attorney Auerbach stated that, other than public right-of-way, they would have to get authorization, just as anyone who wants to use someone else's property does. Ms. D'Amato questioned if the driveway was on Town property and was told no.

Ms. Wahler stated the subdivision map shows 95' from Brookside. Mr. Hogan stated part of that is the right of way and is not fully paved.

Mary Shea of 7199 Brookside asked if the drainage to the pond can be filled in. Attorney Auerbach stated that at this time there is nothing in the record establishing who owns the drainage or whether there is a beneficial easement for use or maintenance. If the development of this property causes drainage impacts

to adjoining properties, it becomes a private right of action. If the variance is granted, the applicant will proceed with the building permit process through the building department.

Ms. Wahler stated she understands it is a 100 x 200' swale.

Mr. Zimmerman stated Howard Roth was very careful, saved trees and thinks that should be given some consideration.

Ms. Shea asked if a road goes in, could the property get more feet. Attorney Auerbach stated no, property lines don't change. Senior Building Inspector Belson stated the Town doesn't put in roads, the developer puts them in and then dedicates them back to the Town, if the Town accepts them.

Hearing no further comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Jablonski, seconded by Member McCabe to table this action until the June 23, 2015 Zoning Board of Appeals meeting for clarification on easements and drainage.

Attorney Auerbach stated it would be feasible to ask the applicant to provide information regarding any beneficial easements for drainage or otherwise related to the property or to make approval conditioned on granting any easements required by the Town.

MOTION made by Member Roth, seconded by Member Jablonski to adjourn. 4 Ayes, 0 Nays, Carried.