

TOWN OF LOCKPORT  
ZONING BOARD OF APPEALS  
August 23, 2016

PRESENT: Kevin McCabe  
Donald Jablonski  
Tim Lederhaus, Chairman  
Elaine Sobieraski  
John Lang, Alternate  
Kevin Roth

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

The August 23, 2016 Zoning Board of Appeals meeting was called to order at 6:00 pm by Chairman Lederhaus, who then led the Pledge of Allegiance.

Chairman Lederhaus noted all members are present.

**MOTION** made by Member Sobieraski, seconded by Member Jablonski to approve the July 26, 2016 minutes. 5 Ayes, 0 Nays, Carried.

**CASE #1**                    **7204 Brookside Drive – 124.03-3-107** – Herbert Munk. Requesting an area variance to construct a ranch style home with less than the required 30' total side setback. Charles Kelkenberg, home builder presenting. Mr. Kelkenberg stated they are proposing a 57' wide home with 10' and 13' side setbacks, where a 30' total side back is required under the Town Code, making a 7' total side setback variance needed. Senior Building Inspector Belson noted that the Town Code requires a 30 foot total side set back, with a minimum of 10 feet on each side and that there are 13 other homes in this area that have been granted side setback variances.

Chairman Lederhaus re-opened the Public Hearing.

Sandra Wahler of 7208 Brookside Drive stated she lives next door to the property and has done some research. Ms. Wahler stated she feels the character of the neighborhood will be seriously compromised if the variance is granted and only 13 out of 75 properties have been granted a setback variance. Ms. Wahler feels there is a potential financial burden on the direct neighbors that will be quite substantial, having a ranch so close to the property line and she has checked with her insurance agent who told her that her fire insurance will be raised due to the home being so close.

Ms. Wahler stated there are also other alternatives for the home to be built. One would be for Mr. Munk making arrangements with her and her husband to move to a different lot that they own on the other side of their home, with the Wahlers

taking the Munk lot at issue to add to their property, making it the payment for the new lot. Ms. Wahler stated it would be an even swap for the property, but the Munk's would get 10 more feet of property. Another alternative is that there are other properties up for sale. Ms. Wahler stated another alternative would be to change the design of the home.

Ms. Wahler stated Mr. Munk purchased the property years ago to build a small retirement home, but had no plans then and the plans have just been drawn up a year ago. Ms. Wahler feels the home should fit on the lot per the Town Code and no adjustments be made to impact the neighbors. Ms. Wahler stated it is nothing against them personally.

Chairman Lederhaus asked how large the home to be constructed is and if there are other ranches in the area. Ms. Wahler stated that there is a ranch home directly across the street from this proposed ranch. Mr. Kelkenberg stated the proposed home is roughly 1800 square feet. Senior Building Inspector Belson stated the home meets the state building codes for separation of structures and the minimum town side setback of ten feet from the property line to the proposed ranch house.

Mr. Kelkenberg pointed out that the garage side of the proposed house would be located 13' off the Wahler's property line and the back deck is also on the west side of the home which is on the other side from the Wahlers property line. Mr. Kelkenberg stated that in his opinion as a long time home builder, that this home is a \$350,000 home, not including the property land value, and he doesn't feel it will lower the property value of any neighbor.

Ms. Wahler stated her property value is over \$400,000. Ms. Wahler stated she also feels this is a self-created problem and not a hardship, as it is caused by the way the plans are drawn since the garage could be moved towards the back of the house and a variance would not be needed.

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

Member McCabe stated he feels if a variance is not granted, this property will not be given the same consideration as the other properties who were granted area variances in this area and that these properties have fit fine within the character of the entire neighborhood.

**MOTION** made by Member Jablonski, seconded by Member McCabe to grant the area variance to construct a ranch style home with a 23' total side set back which is less than the required 30' total side setback and adopt the following findings that benefit to the applicant outweighs any detriment to health, safety and welfare of the community on balance as follows:

1. The requested variance will not create an undesirable change in the character of the neighborhood, as 13 other properties in the neighborhood have been granted area variances for side setback issues, that there is a ranch house directly across the street from this proposed house and that though the total side back requirement of 30' is not met, the side set back on each side of this proposed house is ten feet or greater which is consistent with the Town Code minimum side set back requirement thereby leaving sufficient space between property lines;
2. The benefit sought by the applicant could be achieved by any other feasible method such as moving the garage behind the house or reducing its size, but such design would be inconsistent with other homes on the street;
3. The requested variance for relief from the total side back requirement is not substantial as the minimum required side set back of 10' from each property line is met under the proposed house;
4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and
5. Even though the issue is self-created, using the balance test, the variance should be granted.

4 Ayes, 1 Nay (Member Roth), Carried.

**CASE #2**

**5773 West Jackson Street – 94.04-2-10** – Bradford Clack – Requesting a variance to construct an additional 1200 square foot accessory structure on premises. Said request would make the total square footage of accessory structures greater than the square footage of the principal structure, which is not permitted under the Town Code. Mr. Clack presenting. Mr. Clack stated he would like to construct a 30' x 40' garage to the back where there is a 20' x 20' garage now. The garage would be used for storage for cars, lawn mower, snowmobile, things that he can't put in the garage now. The construction would be a pole barn and match the home.

Member Jablonski asked about the construction. Mr. Clack stated steel roofing and gutters, no heat or water. Member Jablonski asked if there is also a 10 x 20' covered patio and Mr. Clack stated yes.

Member McCabe asked if this is a Parco building and Mr. Clack stated no, a pole barn style and he has a 4 acre parcel.

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

**MOTION** made by Member Jablonski, seconded by Member McCabe, to issue an area variance to construct a 1200 square foot accessory structure and adopt

the following findings that benefit to the applicant outweighs any detriment to health, safety and welfare of the community on balance as follows:

1. The requested variance will not create an undesirable change in the character of the neighborhood as it is located on a large lot with trees and shading;
2. The benefit sought by the applicant cannot be achieved by any other feasible method;
3. The requested variance is substantial, but the lot size and layout will make it blend in;
4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and
5. The difficulty was self-created, but using the balance test, the variance should be granted.

5 Ayes, 0 Nays, Carried.

**CASE #3**

**6352 Locust Street Extension – 138.06-1-53** – Fred Preish – Application requesting a variance of the Town Code to construct a single family residence on a lot with 60.18 feet of frontage, as the Town Code requires 85 feet. Rick Switala of 5533 Twilight Lane stated he would like to purchase the property but wants to make sure he can do what he wants to first. Mr. Switala stated he would like to put in a 290' driveway, so the home could be placed in the 250' wide area where there are woods all around and the neighboring home would be about 220' away.

Member Jablonski asked if the driveway would run all the way back and Mr. Switala stated yes, that's all that would be in the 60' of frontage.

Chairman Lederhaus asked if the utilities will be underground and Mr. Switala stated yes. Mr. Switala stated he would also like to put in a pole barn for personal storage use and he wouldn't disturb the woods.

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

Senior Building Inspector Belson noted that there is a 30' easement that the driveway cannot be in. Mr. Switala stated he is aware.

**MOTION** made by Member Jablonski, seconded by Member Sobieraski to grant an area variance of the Town Code to construct a single family residence on a lot with 60.18 feet of frontage, as the Town Code requires 85 feet and adopt the following findings that benefit to the applicant outweighs any detriment to health, safety and welfare of the community on balance as follows:

1. The requested variance will not produce an undesirable change in the character of the neighborhood;
  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 on the environmental conditions in the neighborhood; and
  5. The difficulty is not self created.
- 5 Ayes, 0 Nays, Carried.

**CASE #4**

**7256 Tonawanda Creek Road – 168.02-1-30** – Louise Keene – Application requesting variances of the Town Code in order to attach a garage to the west side of the house with proposed 2' side setback and closer than the 50' front setback, as the Town Code requires a 10' side setback and 50' front setback. Ms. Keene presenting.

Ms. Keene stated she put in a concrete driveway when she moved in and took down the deck, but the area is very close to the road and she needs a variance to have the garage 4 to 5' forward from the house, which will still leave room for a car to fit in the driveway. Ms. Keene stated she lives on a pie shaped lot and will be 2' from the neighbors property line, but there is a swale there. Ms. Keene stated when it snows, the car get pummeled by the snowplow and she has to clean it off several times a day. The garage will have a 16' garage door and will match the roof line of the house.

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

Attorney Norris noted there are two variances needed for this home, the front and side.

**MOTION** made by Member Jablonski, seconded by Member Roth to grant an area variance for 7256 Tonawanda Creek Road as the distance from the road to the garage is shorter than required, with no more than the pitch line of the home and adopt the following findings that benefit to the applicant outweighs any detriment to health, safety and welfare of the community on balance as follows:

1. The variance will not create an undesirable change in the character of the neighborhood;
2. The benefit sought by the applicant cannot be achieved by any other feasible method;
3. The requested variance is substantial, but is being requested to keep the cars and home safe;

4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and
  5. The difficulty was not self-created.
- 5 Ayes, 0 Nays, Carried.

**MOTION** made by Member Jablonski, seconded by Member McCabe to grant an area variance to Ms. Keene at 7256 Tonawanda Creek Road to construct a garage with less than a 10' side setback and adopt the following findings that benefit to the applicant outweighs any detriment to health, safety and welfare of the community on balance as follows:

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 variance is substantial, but not enough to deny;
  4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and
  5. The difficulty was not self-created.
- 5 Ayes, 0 Nays, Carried.

**CASE #5**

**6544 Slayton Settlement Road – 95.02-1-49 – Ritchie Lawton – Application** requesting a variance of the Town Code to construct an accessory structure with a 6.5' west side setback as the Town Code requires a 10' side yard setback. Mr. Lawton presenting.

Mr. Lawton stated he wants to build a 24' x 24' accessory building which will be 32" more towards the property line and he has moved it over as far as he can due to having a 10' x 10' deck on his home. Mr. Lawton stated moving the garage back 36" would put it behind his mud room. Mr. Lawton has knocked down the existing garage. The next house to the west is at least 25 feet away.

Chairman Lederhaus asked how far this garage will be from his home. Mr. Lawton stated 36". Chairman Lederhaus explained that it will have to be fire proofed to be that close. Mr. Lawton asked how far away it would have to be. Senior building Inspector Belson stated at least 5' from the home or it will have to be fire proofed and needs to meet the rating. Mr. Lawton stated he can't move it back because the leech lines are behind the garage. Senior Building Inspector Belson stated he can apply to the State for a variance, but that is the State requirement. Mr. Lawton stated he can move it both ways a little and thinks he can make it fit. Mr. Lawton modified his request to no closer than 2' from west property line.

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

**MOTION** made by Member Jablonski, seconded by Member Roth to grant an area variance to Ritchie Lawton at 6544 Slayton Settlement Road to construct an accessory building no closer than 2' from the west property line, where 10' is required and adopt the following findings that benefit to the applicant outweighs any detriment to health, safety and welfare of the community on balance as follows:

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 variance is substantial, but not large enough to not grant it;
4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and
5. The difficulty was self-created, but when using the balance test, should be granted.

5 Ayes, 0 Nays, Carried.

**CASE #6**

**7120 Akron Road – 124.03-2-77** – James Williams – Application requesting a variance of the Town Code to construct a noncommercial wind conversion system within the required 1.5 setback of any structures, as the owner's barns are within the required structure setback of the proposed system placement. Tyler Palmer of United Wind presenting.

Senior Building Inspector Belson stated the Planning Board approved this project conditional on Zoning Board approval, as it meets all other setbacks.

Mr. Palmer stated the buildings are accessory structures and non inhabited. If the setback was strictly adhered to, it will add substantially to the cost of the tower due to additional wire. Chairman Lederhaus asked what the buildings house. Mr. Palmer stated hay wagons, tractors, farm equipment.

Chairman Lederhaus asked if they will be on a foundation and how large the blades are. Senior Building Inspector Belson stated that had all been addressed by the Planning Board.

Chairman Lederhaus opened the Public Hearing.

Paul Diemert of 7116 Akron Road asked if there is any appreciable noise. Mr. Palmer stated about 42.9 decibels and normal noise is 50 to 70 decibels. Senior Building Inspector Belson stated the Planning Board addressed all those issues.

Tyrone Renouf of 7134 Akron Road asked how high the tower will be. Mr. Palmer stated 153.8' feet and will have a light on top as requested by Mercy Flight.

Chairman Lederhaus asked if the tower falls, where will it land. Mr. Palmer stated it won't hit the lot line, and they have a break point in half way up.

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

**MOTION** made by Member Jablonski, seconded by Member Sobieraski to grant an area variance to construct a wind turbine at 7120 Akron Road, with a structure closer than 1.5 times the height and adopt the following findings that benefit to the applicant outweighs any detriment to health, safety and welfare of the community on balance as follows:

1. The requested variance will not create an undesirable change in the character of the neighborhood;
  2. The benefit sought by the applicant cannot be achieved by any other feasible method;
  3. The requested variance is not substantial;
  4. The proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and
  5. The difficulty could be considered self-created, but it is only closer to the owner's uninhabited building and should be granted.
- 5 Ayes, 0 Nays, Carried.

The next Zoning Board of Appeals meeting will be September 27, 2016 at 6:00 pm.

**MOTION** made by Member Jablonski, seconded by Member McCabe to approve tonight's decisions. 5 Ayes, 0 Nays, Carried.

**MOTION** made by Member Roth, seconded by Member Sobieraski to adjourn. 5 Ayes, 0 Nays, Carried.

**BY ORDER OF THE TOWN OF LOCKPORT  
ZONING BOARD OF APPEALS**