

Minutes of the Town of Lake George Zoning Board of Appeals held on Thursday, February 5, 2004 at 7:00 p.m., at the Town Center, Old Post Road, Lake George, New York.

Members Present: Chairman, Peter Smith
 Scott Walton
 John Santiago
 Hoddy Ovitt
 Karen O'Carroll
 Laura Moody, Alternate Member

Also Present: Robb Hickey, Zoning Enforcement Officer
 Patty McKinney
 Bob Risman
 Jim Grey
 Susan Barden, LGA
 Chris Navitsky, Lake George Waterkeeper
 Dana Richardson
 Attorney John Caffry
 Bill Spangel
 Elaine Spangel
 John Salvador
 Mike LaMott
 Robert Swan
 Irene Swan
 Jeff Giannella
 Debrann Giannella
 Linda Fanniff
 Marylou Vosburgh
 Attorney Brad Krause
 Lonnie Lawrence
 Horst Schwemmlein
 Claudia & Vinnie Spitzer

Meeting was called to order at 7:00 p.m., by Chairman, Peter Smith.

Chairman Smith welcomed Karen O'Carroll and Alternate Member, Laura Moody.

A motion was made by Scott Walton and seconded by John Santiago to accept the January 8, 2004 minutes.

All in favor.

Motion carried.

REGULAR MEETING

1. Area Variance Application V1-2004 submitted by Jeffrey J & Debrann A Giannella for property located on the corner of Beach and Prolyn Road to place a 16x34 structure on a 46x78 foot lot. The applicant is requesting a 17.5 front yard variance, a 13.75 rear yard variance, and a 12.5 side variance.

John Santiago read the application into the record.

A motion was made by Scott Walton and seconded by Hoddy Ovitt to accept the application as complete.

All in favor.

Motion carried.

2. Area Variance Application V2-2004 submitted by Barbara and Horst Schwemmlein for property located at 2907 State Route 9 to change existing single family dwelling into a two family dwelling. The applicant is requesting a 2,639 square foot lot coverage variance.

Scott Walton read the application into the record.

A motion was made by Scott Walton and seconded by John Santiago to accept the application as complete.

All in favor.

Motion carried.

3. Area Variance Application V3-2004 submitted by Guido Passarelli for property located at 2988 Lake Shore Drive to construct a 24x24 gazebo with a 4x8 attached bath. The applicant is requesting a variance to place the gazebo in the front yard.

Hoddy Ovitt read the application into the record.

A motion was made by Karen O'Carroll and seconded by Scott Walton to accept the application as complete.

All in favor.

Motion carried.

4. Area Variance Application V4-2004 submitted by Vincent Passarelli for property located at 2992 Lake Shore Drive to construct a 24x24 gazebo with a 4x8 attached bath. The applicant is requesting a variance to place the gazebo in the front yard.

Karen O'Carroll read the application into the record.

A motion was made by John Santiago and seconded by Hoddy Ovitt to accept the application as complete.

All in favor.

Motion carried.

Chairman Smith announced that on February 26, 2004 there will be a special meeting with a Public Hearing to rehear the Vojac Appeals as per ordered by the Supreme Court.

A motion was made by Hoddy Ovitt and seconded by John Santiago to close the regular meeting and open the Public Hearings.

All in favor.

Motion carried.

PUBLIC HEARINGS

1. Area Variance Application V15-2003 submitted by W. Bradley Krause, Esq., on behalf of Halcyon Lodge Property Owners requesting relief from Section 175-16 of the Zoning Ordinance requiring each lot to have a minimum road frontage of 100 feet.

Attorney Brad Krause was present representing the applicant.

The Halcyon Lodge is on the west side of Lake George and the property itself contains 7.45 acres of land. It only has 73 feet of direct road frontage on State Route 9N. They are seeking to subdivide that 7.45 acre lot into two lots. As a result, the two lots that will be created will not have the minimum of 100 feet on the public road frontage as is required by the Town Zoning Ordinance. No new development or construction is being proposed at this time. There are existing structures on both of these lots. They are currently accessed by a well maintained and well established private road, which deeded access along that road will be granted to both lots.

Chairman Smith read the Warren County Planning Board recommendation. A copy of this recommendation is on file in the Planning and Zoning Office.

Chairman Smith opened the comments up to the audience.

There were no public comments.

Karen O'Carroll asked about the maintenance responsibility. Has this been addressed?

Attorney Brad Krause stated that the family members of both lots have written an agreement, which describes the easement along the road, which also entails a maintenance agreement. They will split the maintenance costs for the road, including snow removal. The maintenance agreement information has been submitted to the Planning Board as part of their formal application.

John Santiago asked if there was any contractual access from an upland parcel going across either one of these properties.

Attorney Brad Krause stated they are aware of no contractual access. This property has been in the family for decades and there has never been a question about access to their beach or lakefront or any other access over this property for any other purpose that they know of.

Scott Walton asked if as a result of this, will there be any contractual access granted?

Attorney Brad Krause stated that there will be the private road, an easement will be reserved for utilities and there is another easement between the parties for the purposes of maintaining the gazebo area.

A motion was made by Scott Walton and seconded by John Santiago to close the Public Hearing.

All in favor.

Motion carried.

John Santiago read the criteria:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Neither an undesirable change in the character of the neighborhood nor a detriment to nearby properties will occur by the granting of the requested relief. Although the applicants who would become the owners of proposed sub lot 1 (south lot) may seek to further develop that lot in the future, the proposed subdivision does not involve new development of any kind or any change in use on any portion of the property at this time. Consequently, no change in the character of the neighborhood and no detriment to nearby properties is possible.

- 2) Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.

The benefit sought by the owners cannot be achieved by any other method. The owners seek to amicably divide the original lot between themselves to

avoid litigating a formal partition action and to maintain some family ownership of a portion of the original lot, in particular, sub lot 1 (south lot). Any such division of the original lot necessarily entails obtaining the requested relief as the original lot only contains approximately 73 feet of road frontage.

- 3) Whether the requested area variance is substantial.

The requested area variance is not substantial when viewed in the totality of the existing circumstances. Although neither of the proposed sub lots will contain 100 feet of road frontage, no actual changes will occur on site by reason of the requested relief as no new development or change in use of either sub lot is proposed at this time. Furthermore, the sub lots will have deeded access over a pre-existing, well established and maintained private road.

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. As indicated above, the proposed subdivision and variance merely facilitate a family partition of the original lot and do not involve new development or changes in use at this time. Because no actual changes will occur on site, no adverse effect or impact on the physical or environmental conditions in the neighborhood are possible by reason of the requested relief. Any future development or proposed changes in use of either proposed sub lot will require approval by the Lake George Town Planning Board and/or the Lake George Town Zoning Board of Appeals at that time.

- 5) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The lack of the required road frontage for the proposed sub lots is not a self-created difficulty as the original lot contains only 73 feet of road frontage. Upon information and belief, the present boundaries of the original lot were either created in compliance with the then existing zoning ordinance or were not subject to a zoning ordinance.

A motion was made by John Santiago and seconded by Scott Walton to approve Area Variance 15-2003 with the condition that no contractual access be granted to anyone who is not a party to that now.

John – Yes

Scott – Yes

Hoddy – Yes

Karen – Yes

Peter – Yes

Motion carried.

2. Area Variance Application V1-2004 submitted by Jeffrey J & Debrann A Giannella for property located on the corner of Beach and Prolyn Road to place a 16x34 structure on a 46x78 foot lot. The applicant is requesting a 17.5 front yard variance, a 13.75 rear yard variance, and a 12.5 side variance.

Jeff Giannella stated that what they were looking to do is place a one and a half story structure on a 46x78 foot lot on the corner of Prolyn and Beach Road. They are looking to make it as unobtrusive as possible based on the lot size in question. He presented a breakdown of all the lots in the neighborhood and the percent of lot that their homes cover. He stated that they do feel that they should be able to do something with the lot. He stated they know there is nothing that can be done without a variance.

Mr. Giannella handed out a map, which shows that there was a structure on the property at one point.

Karen O'Carroll asked if the front would be Beach Road.

Mr. Giannella stated that yes, the front door would face Beach Road.

John Santiago asked if this would be a rental property.

Mr. Giannella stated that this would be for their children.

Scott Walton asked how they would back out onto Prolyn Road.

Mr. Giannella stated that there would be parking for two cars with more than enough room to back out on Prolyn Road.

John Santiago asked the applicant if the large tree on the property would be disturbed.

Mr. Giannella stated that this tree will not be disturbed.

Scott Walton asked how the applicant's purchased this property.

Mr. Giannella stated they bought it from the County at a tax auction.

Scott Walton asked if when they bought this property, did they know that it was a substandard lot.

Mr. Giannella stated they knew it was substandard and that they would need a variance if they wanted to do anything with it.

Chairman Smith opened the comments to the audience.

Dana Richardson read a letter he had submitted. A copy of this letter is on file in the Planning and Zoning Office.

Dana Richardson: "On the way back down the Northway this morning, I happened to think about what was said to me when I spoke to Mr. Hickey this afternoon around 4:30. I had no idea that they had changed their application for a 16 foot by 34 foot building. You're talking about a half a trailer. If you count the slats on that blind behind you, they are four inches apart. That one section is 10 feet and half of the next section is another six feet. That's the width of the building that they want to put on this particular lot. My particular property which is 3 feet from that property is 1,900 square feet. I put a lot of work and time into that building. The property that the applicant's live in currently also is at least 1,800 square feet, which is adjacent to me on the other side. I do not know what Mr. Swan's size is. The residence that is directly behind this lot is approximately 1,800 to 1,900 square feet. The people who just paid a half a million dollars for the lot directly in front of me, 25 feet from me, I believe they had no idea this hearing was taking place. I did contact them as one of the six people that I mentioned and they did FAX a letter to this board. The building that they are proposing to put up on this lot that has never conformed to any variance

and as I have been told, you would have to apply for a variance to put a flagpole on it or a mailbox, is not in consistency with the rest of the neighborhood. It may be farther on back up on the hill where there are smaller cabins that are built on concrete piers, but it has nothing to do with the integrity of the particular block that I happen to be living three feet from. On the way down the Northway tonight, I took my time and I contacted via phone, three different Real Estate companies and I was told point blank that putting up a little more than a 600 square foot trailer, it's even smaller than that, if you consider the 2x6 construction that must be put up according to New York State Codes today, it's only 15 feet wide, that I would be absolutely foolish not to turn around and come back and voice my opinion, in addition to the letter that I wrote to this board. I'm asking this board to keep this hearing open. Do not vote on this. Do not close this because the 60 to 70 people that live within 500 feet of this proposed site will respond. I am telling you, from my own belief and from my hours of time that are spent on this, that the people that will respond will be overwhelmingly in favor of opposition. I'm talking about the people that are going to be directly affected that are located adjacent to this immediate property. The last thing I want to leave you with is that when you want to build a house on Beach Road where the values of everybody's property and hard sweat have been applied, to this particular part of the Adirondack Park, that you do not want an advertisement for someone driving along Million Dollar Beach, leaving the Village to pass a trailer. I am also afraid of the fact that they have a similar lot on the other side of my property on Prolyn Road, that if this variance is granted, that is very possible that they might have other children that want to set a building on that lot. I'm not sure if they can or not, but I think that we need to draw a line that my house is a year-round house, you all live up here and other people on Rose Point live up here and it would be in everybody's best interest that this board of Zoning Appeals represent all of us."

John Salvador: "It would be helpful if the variances were measured in a degree that would be able to tell us the percentage of relief that is being requested. Unless you are very familiar with the Code, you don't know how a 17.5 foot variances compares to what is required. You have to make a determination as to whether or not the relief requested is substantial, moderate or excessive and that's a basis for your determination and that's a measure of the percentage. You can't tell from the presentation here of what that is and I think it would be helpful if it was converted to a percentage."

Vinnie Spitzer: "I live on Rose Point Lane, kiddy corner from this property and directly in front of Jeffrey and Debra Giannella's house and kiddy corner from Mr. Richardson's house. Just to set the record straight, the man next door paid \$445,000 for his house, not quite a half a million. He's new. He just got here. He probably got a call from his neighbor behind him, got scared and figured well I better support my neighbor. I know Peter Keating and if I talked to him for 5 minutes, he wouldn't have sent that letter. I don't want to use Peter Keating here as an arguing point. He got him to send a letter, it's okay. He didn't talk to anybody else around here. He's new. He just bought the house. Now, I recall sending a letter to this board, maybe before on the last application that Mr. and Mrs. Giannella sent in, did you guys have that as part of the record. I would ask that to be read into the record before you close the Public Hearing. When the Giannella's wanted to do something else on that property, they were told basically by this board, forget it, don't even bring it in, we're not going to talk to you. It was a 20x32 house, not 16, 20x32 and they were told forget it. Now obviously, this board has changed. They tried to be reasonable. Reasonableness is what this board is about. Reasonableness is about a person buying a piece of property and asking to reasonably do something on that property to make it valuable or more valuable. I would remind you that there is a dilapidated old shed on that property that has been sitting there for 40 years or better. It seems to me that if a guy can't do anything on his property, then he might as well have the Town buy it and turn it into a park and then everybody will be happy here. The problem is that the people who are complaining about this are the ones that have it already. They already have their house, they have their little lot, they have their lot coverage and they don't want somebody else to have it. That's really what this is about, that's all. These people, when they do something, they do it well. They do it with taste. Whatever they are going to do in there, they're going to do it nicely and it's not going to hurt anybody's property. Other people have houses too close to the line, they have decks too close to the line, two story decks right on the line, but that's okay I guess. The other guy wants to put in something. Personally, I wish he would put in something bigger. The guy across the street, the lot next to your property, Scott, he put something in, it's huge. Now I don't know whether that's because the zoning is different, but it's a huge building. So the character of the neighborhood certainly is not going to be changed. By the way, since you are a neighbor, I don't believe you should be discussing, you should be recusing yourself from the board."

Scott Walton: I don't have any financial interest in this, Vinnie.

Vinnie Spitzer: "If you own property within 500 feet, you'd probably be wise not to decide on this. You decide what you want to do. Now, regarding Mr. Richardson's comment about them putting another house on their lot. They can't do that. That lot was created in 1986 by me. That is one lot. They can't subdivide that lot, not without coming to you guys and you're not going to let them subdivide a substandard lot again. That's not a good argument. The point is, these people, any people in Lake George who buy a lot, no matter of they bought it, should have a reasonable expectation to do something to improve it. If you could see fit to say that this is an improvement, I think you have every right and every obligation to give them the variance."

Irene Swan: "I'd like to point out that if you grant the variance, we would be covering 16.1% of the lot. Our house, my husband and I, our house covers 22.3% of our lot. The Giannella's have two lots actually, which became one, they are only covering 6.3% of their lot. Mr. Richardson, who seems so opposed to us, his oversized house, covers 57.1% of his lot. We had a larger structure in mind, we were told don't bother, it's too large. We downsized it, we'll face it anywhere you folks want and still we're having a problem. (Mrs. Swan presented the board with photos). You can see that Mr. Richardson's house is immediately next to our fence, with no regard to building structures, no zoning, no getting permission to do anything."

Chairman Smith read several letters into the record. Copies of these letters are on file in the Planning and Zoning Office.

A motion was made by Scott Walton and seconded by John Santiago to close the Public Hearing.

All in favor.

Motion carried.

Scott Walton: "I'm sorry that this thing seems to have so much turmoil on both sides, but I think you kind of have to look at that lot with common sense. I think John Salvador had an excellent recommendation. I'd ask the Zoning Officer in the future if we can put a percentage on these side and rear and front lot variances so it puts in a little more perspective. I just think that that size property is just, it's like a postage stamp there and it's just too much for that property. That's my feeling and it wouldn't matter if it was

there or if it was anywhere in the Town. I think when you have a piece of property like that and you knew full well when you bought it. I looked at it, and it's just to me, it's just sort of like common sense. I don't know how anybody else feels about it on the board."

Karen O'Carroll: "I'm not sure we can do anything about this at this point because we haven't received anything from the County yet."

Chairman Smith: "Okay, we'll wait until we hear from the County."

3. Area Variance Application V2-2004 submitted by Barbara and Horst Schwemmlein for property located at 2907 State Route 9 to change existing single family dwelling into a two family dwelling. The applicant is requesting a 2,639 square foot lot coverage variance.

The applicant was not present.

A motion was made by Scott Walton and seconded by John Santiago to hold the Public Hearing open.

All in favor.

Motion carried.

4. Area Variance Application V3-2004 submitted by Guido Passarelli for property located at 2988 Lake Shore Drive to construct a 24x24 gazebo with a 4x8 attached bath. The applicant is requesting a variance to place the gazebo in the front yard.

Michael LaMott was present representing the applicant.

Michael LaMott: These are simply gazebos that are 75 feet from the lake. Tuesday night I was before the Planning Board and they had some requests. One was a new stormwater plan, reflecting addition of gazebo and garage and some land clearing. Also, there was a request for some driveway drawings on the, it would be the back of the houses and also another planting plan for the garages and gazebos and obviously because of the baths, it has to go before the Consolidated Board of Health. I've done that today with our engineer, Gary Robinson, and he'll work on all of this. Hopefully, he'll have it to me by the 18th."

Chairman Smith: “The garages don’t need a variance, they’re in the back yard.”

Michael LaMott: “No, but the Planning Board requested that I bring in drawings separating the two lots and showing the garages with the planting plans for both the gazebos and the garages.”

Chairman Smith: “You’re going to have a bath there, what are they going to do with the discharge?”

Michael LaMott: “There will be a pumping station back up to, whatever the engineer comes up with and the Consolidated Board of Health recommends, that’s what we’ll do.”

Scott Walton: “You’re before the Consolidated Board of Health anyway, right?”

Michael LaMott: “Yes, but Tuesday night Tom Jarrett said that there would be no problem with the septic size because it was way over capacity to begin with.”

Scott Walton: “I’m very familiar with this because I was on the Planning Board when this layout and everything was done. I know that the Planning Board is going to scrutinize any plantings or anything else that they are going to require for this.”

Karen O’Carroll: “There are screens in the gazebo, there wouldn’t be glass.”

Michael LaMott: “Could be, I guess. You could make them three season. There could be storm windows in there with screens and glass. I put screens in them because Summer is coming up.”

Karen O’Carroll: “Will there be a heating source in there as well?”

Michael LaMott: “No. There’s no heating source at all. It will strictly be Summer use, but because of the location, it’s a long walk from down below back up to the houses.”

Chairman Smith opened the comments to the audience.

John Salvador: “Does the Town have standards for gazebos? Are there zoning standards, construction standards, height limitations, setback requirements on gazebos? A 24x24 foot gazebo is quite a structure and then with an attached bath. You know we’re not allowed to have anything that looks like any kind of a living thing in a boathouse and yet in a gazebo. My question is, where does this end? Is the next gazebo going to be 30x30 and then 36x36 and then 48x48? Does it enter into the lot coverage, permeability, the run-off?”

Robb Hickey: “Alone it would not need any stormwater plan, he would fall under the area of disturbance. He’s going to do a total stormwater plan, including these things for the Planning Board.”

John Salvador: “I thought it was already done. Didn’t he do that when he got permission to build the dwellings?”

Robb Hickey: “He did part of it, now he’s going to revise his stormwater plan due to his cuttings, and the gazebo and the garage.”

John Salvador: “To what are the standards that we do all of this by?”

Robb Hickey: “It’s in the book with the stormwater plan. John, there’s a major stormwater plan that he will submit.”

John Salvador: “Are you telling me there’s no limitation on the size gazebo I can build? Is that what you’re telling me? The Zoning Ordinance is willfully inadequate in this regard. This variance has no meaning if you can’t measure it against something. How high are they going to build the gazebos, is there a limitation?”

A motion was made by Scott Walton and seconded by John Santiago to close the Public Hearing.

All in favor.

Motion carried.

Chairman Smith stated that we have to wait for the Warren County Planning Board recommendations.

5. Area Variance Application V4-2004 submitted by Vincent Passarelli for property located at 2992 Lake Shore Drive to construct a 24x24 gazebo with a 4x8 attached bath. The applicant is requesting a variance to place the gazebo in the front yard.

A motion was made by Scott Walton and seconded by John Santiago to close the Public Hearing.

All in favor.

Motion carried.

Chairman Smith stated that we have to wait for the Warren County Planning Board recommendation.

A motion was made by Scott Walton and seconded by Hoddy Ovitt to adjourn the meeting at 8:35 p.m.

Respectfully submitted,

Patricia McKinney
Planning & Zoning Board Clerk