

Minutes of the Town of Lake George Zoning Board of Appeals, held on Thursday, November 19, 2009 at 6:00 p.m., at the Town Center, Old Post Road, Lake George, New York.

Members Present: Chairman John Santiago
Janie Green
Grant Gentner
Bob Risman
Kevin Mulcahy

Also Present: Patty McKinney, Clerk
Mike Seguljic
Dana Seguljic
Jim Grey
George Schuster
Zachary Monroe
Karen Hanchett
Kathy Bozony
Lottie Fish
Jeff Meyer
Joe Stanek
Mike Seguljic
Dana M. Seguljic
Francis X. Sause
Peter L. Kudan
Nancy S. Kudan
Patty Remington
Jim Remington
Suzy Tyrer
Laura Tyrer
Mark Wadsworth
Melissa Vito
Fran Heinrich
David Columb

Chairman Santiago opened the meeting at 6:00 p.m.

A motion was made by Grant Gentner and seconded by Janie Green to accept the October 15, 2009 minutes.

All in favor.

Motion carried.

PUBLIC HEARINGS

1. Area Variance Application #21-2009 submitted by George Schuster to construct a single family dwelling with attached garage, on site wastewater and water supply. The applicant is requesting 9 variances from separation distances of infiltration devices to English Brook, neighbor's wells and wastewater beds (see plans), for property located north of the intersection of Route 9 and Flat Rock Road on the west side of Route 9 (238.17-1-5).

George Schuster stated he wanted to put a two bedroom, two story, 24 x 30 structure on his property. They did stormwater runoff for 40 x 60 single story, with two car garage and breezeway. At the last meeting, the test pits were requested and they have been done and the results provided to the board.

Kevin Mulcahy stated he had discussed lining the retention areas with heat in order to slow down the infiltration on that. He stated the rates for infiltration do indicate that would be a good condition to put on this.

Chairman Santiago opened the comments to the audience.

Karen Hanchett: "I live across the street from this property in question. I feel very strongly about the variances, the amount of variances adjacent to neighbors wells, septic and most importantly the Brook. I have a picture for you tonight of the delta and over the years that delta has grown. Also today, I understand that a construction site just south of us on the west side of the Brook has had a Stop Work Order put on it because number one, they didn't put any silt fences up, they didn't have permission for the retaining walls. These are problems that are continually coming up and what is our process to police this and keep people on the right page. If you're granting something to them, then they should be compliant with that. That is an issue that I wanted to point out to you that is continually happening around here. I think all of these things are our responsibilities and English Brook is a major contributory to Lake George and is also on the spot light as a protected stream. We want to be as a community ahead of the game on those kind of issues, I would think. That's my opinion, but I would hope other people would see that. Going back to the particular application, I really feel that we have very extreme variances that we're looking at here and please consider the impact that we have on the neighbor's wells, the quality of life and also the impact on the quality of the lake. This is a large project for a very small piece of property.

Chairman Santiago stated that the project that Mrs. Hanchett was concerned about has no relevance to the project before the board tonight.

Kathy Bozony: "A lot of my letter is in reference to the Consolidated Board of Health Meeting. I don't know if anyone else has listened to the minutes or read the minutes. Basically, the application that was filed for the Consolidated Board of Health variance states under describe in detail all variances requested, variance from Lake George Standards to New York State Department of Health Standards and then under that it states variance from 100 foot separation from wastewater field to well to 57 feet plus or minus; variance from 100 foot separation from neighbor's wastewater to well, 91 feet, plus or minus. At the beginning of the meeting, Fred Austin asked the applicant whether or not they had met all conditions for setbacks of the wastewater and Robb Hickey said yes and then Jim Hutchins' said yes and then they proceeded to go on and talk about the variances needed for the 150 gallon per day verses the 110 gallon per day which is the Department of Health and those variances are granted often by the Consolidated Board of Health. They also talked about the 100 foot necessary setback when in fact it is a 200 foot necessary setback. No where during the Consolidated Board of Health did they ever discuss the setback from the wastewater system to the onsite wastewater system necessary of 200 feet nor did they discuss that from English Brook based on the percolation rate of 0-5 minutes, it is required 200 feet and the fact that it is a leaching bed, it is required 200 feet from English Brook. So in that meeting, they did grant the variances for 110 gallons per day, the variance for 57 feet from the applicant's well to the onsite wastewater and then also the variance from the applicant's well to the neighbor's well to the south and west. These issues with the 200 foot separation have not been addressed by anybody. It is in the Town of Lake George A-180 8 (A) and it specifically states this is what is required. I know we mentioned last time that there was a den that was proposed and it was determined that there were no walls there and it really probably wasn't a den. New York State Department of Health Design Handbook *"Expansion attics, basements, sleeping porches, dens and recreation rooms, which may be converted to additional permanent bedrooms in the future, should be considered in calculating design flow"*. This may end up being an open place where you walk up the stairway and go into the two bedrooms or it may become a bedroom in the future. The house is designed where this room if there was a wall added, could be 9 x 11 which is an adequate size for a third bedroom. In planning a house that could potentially be three bedrooms, we need to look at it as a three bedroom and size the wastewater accordingly. The last issue I just wanted to mention is the fact these Consolidated Board of Health Waivers that weren't really addressed can only be granted by the New York State Department of Health. I listened to the tape several times just to hear whether or not they discussed any of these and they just didn't even bring them up. They are in the Town of Lake George Code and for a reason, because we want to protect our water and we want to protect our water quality and something that is 100 feet from English Brook that has a perc rate that is just minimal for that distance. That's our concern. Thank you very much."

Mike Seguljic: "I recollect talk about their being another house on this property and I don't recall if the old house had a well and septic and if that ever came up. If the old house did have a well and septic, they should be properly abandoned. We're seeing a lot of variances being

applied for and a lot of variances being granted. I'm really beginning to wonder about these variances being granted. It seems like they are beginning to negate the very codes that are in place that are meant to protect us, our area and our water quality. Regarding our den space, it just seems to me that if any variances are granted, can they not be conditioned that the house is two bedroom? Regarding inspections by the Code Enforcement Officer, it's impossible for him to check everywhere. We understand a Stop Work Order was issued today. Where was he during that entire construction project? When those walls got built, silt fences fell down. There's a public safety hazard over there. If somebody goes to park on the side of that road, their car is going to go to fall right over that driveway. In closing, as the namesake to the Queen of American Lakes, the Town of Lake George should be a leader when it comes to proper planning and this includes following Town Codes and the Master Plan. Thank you."

Bob Risman asked if there was an old well and septic.

Zach Monroe stated he feels this is a misunderstanding. There was no house on this lot, it was the lot next to his.

Chairman Santiago stated there are letters on file from:

Gerald Benson
Karen Hanchett
Lake George Waterkeeper
Jim Hutchins – Test Pit Results

Copies of these letters are on file in the Planning and Zoning Office.

Chairman Santiago stated that in light of the information regarding the setbacks of 200 feet, he would recommend that Robb Hickey review this to determine if there are any additional variances needed by the Consolidated Board of Health. He stated he feels that this application should go to the Consolidated Board of Health to ensure that all necessary variances were reviewed and granted.

A motion was made by Kevin Mulcahy and seconded by Janie Green to keep the Public Hearing open and that this be referred back to Robb Hickey to determine if the Consolidated Board of Health needs to review this application due to the New York State Department of Health Regulations.

All in favor.

Motion carried.

2. Area Variance Application #22-2009 submitted by Gary D. Zervas, owner being William Whelan to construct a single family dwelling destroyed by fire and add wrap-around porch to sun room. The applicant is requesting a 1.3 foot right side variance. Porch will be 13.7 feet from right side line where 15 feet is required, for property located at 35 Christina Court (238.19-1-59).

Grant Gentner read the application into the record.

A motion was made by Kevin Mulcahy and seconded by Bob Risman to accept the application as complete.

All in favor.

Motion carried.

Gary Zervas was present. He stated he would like to add a wrap around porch to a house that burned down and will be rebuilt. The footing is within the 15 foot setback by 1.4 feet.

Janie Green asked if the foundation was still there.

Gary Zervas stated yes.

Chairman Santiago opened the comments to the audience.

Jim Remington: "President Village Estates Condo Association. We have no opposition to the request for the variance."

Peter Kudan: "I live at 8 Village Estates and we have no objection. We'd like to see it go through. Thank you."

Kathy Bozony: "I don't have an objection to the porch at all. My question is, is this going to Site Plan Review or has it?"

Patty McKinney: "No. It should."

Kathy Bozony: "So stormwater will be addressed at that time and on-site wastewater treatment. Thank you."

A motion was made by Grant Gentner and seconded by Bob Risman to close the Public Hearing.

All in favor.

Motion carried.

A motion was made by Kevin Mulcahy and seconded by Grant Gentner to approve.

Kevin 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.

No.

- 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.

Not a practical one. The footing is already in there.

- 3) Whether the requested area variance is substantial.

No. Very small.

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

No.

- 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.

Yes, it was the applicant's location of the footing that caused it, but it really is not anything that is going to have an impact.

Kevin – Yes

Grant – Yes

Janie – Yes

Bob – Yes

John – Yes

Motion carried.

3. Area Variance Application #23-2009 submitted by Gary D. Zervas Jr. to construct a 32x48 foot detached garage for storage. The applicant is requesting a variance to place the garage in front of the house, for property located at 136 Stone Schoolhouse Road (238.14-1-7.2).

Janie Green read the application into the record.

A motion was made by Grant Gentner and seconded by Bob Risman to accept the application as complete.

All in favor.

Motion carried.

Gary Zervas stated he would like to construct a 32 x 48 garage for storage. The lot is approximately 4.4 acres. It will be about 250 feet off Stone Schoolhouse Road. This is for additional storage.

Grant Gentner asked if he would be running a business out of this as he already has a three bay garage.

Gary Zervas stated this is just for additional storage.

Kevin Mulcahy stated that the applicant has enough acreage to put two single family houses on the property. This is only here for a garage to be placed in the front yard.

Chairman Santiago opened the comments to the audience.

Kathy Bozony: "Again, will this go for Site Plan Review? I see there is some minor stormwater that is there."

Patty McKinney: "I don't believe it will."

Kathy Bozony: "It's a very large building 32 x 48. I understand that it can potentially be used as an additional rental unit. If it being used as storage, that's fine. We don't have to address any increase in wastewater treatment if that's the case. Stormwater would be good if we could condition it that there is some stormwater management on this site or if what is on the design, if that is appropriate, that it's constructed to the design that was submitted."

Kevin Mulcahy stated they would have to do a minor stormwater plan.

Mike Seguljic: "In looking at the dimensions of the garage, it's bigger than my wife's and my house. With that said, I just hope if it is built and a variance is granted that it is of an Adirondack style and not a huge warehouse type building in a residential neighborhood."

Gary Zervas stated it would be like his house which is cedar siding.

A motion was made by Kevin Mulcahy and seconded by Grant Gentner to close the Public Hearing.

All in favor.

Motion carried.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to approve with the condition that there be no plumbing.

Grant 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.

No. It sits on a 4 ½ acre lot. The building will not be seen from the road.

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.

No. A variance is required for a garage in the front yard.

3) Whether the requested area variance is substantial.

No.

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

No. It is a garage with no plumbing and a minor stormwater plan will be done for the construction.

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.

Yes. It is self-created however, it is mitigated by the fact that it sits away from the road with a buffer.

Kevin – Yes

Grant – Yes

Janie – Yes

Bob – Yes

John – Yes

Motion carried.

4. Area Variance Application #24-2009 submitted by Suzanne Tyrer to convert existing flower shop to a second residential structure. Existing building is 2 feet from property line. New porch will be 5 feet from property line where 25 feet is required. The applicant is requesting a 20 foot front yard variance. The applicant has a 26,130 square foot lot and 40,000 square feet is required for both structures. The applicant is requesting a 13,870 square foot density variance, for property located at 363 Bloody Pond Road (264.08-1-2).

Attorney Jeff Meyer was present representing the applicant.

Kevin Mulcahy read the application into the record.

A motion was made by Grant Gentner and seconded by Janie Green to accept the application as complete.

All in favor.

Motion carried.

Attorney Meyer stated the existing structure was permitted in 1995. The owner received all approvals to make this a flower shop. The flower shop is no longer in use and she wishes to change the use from a flower shop to a residential structure. The only changes in the footprint are the two small porches in front that will provide cover when you're entering and leaving the building. All structures are already in place and he stated he does not feel this is a significant variance.

Grant Gentner asked if there would be any encroachment toward Bloody Pond Road.

Attorney Meyer stated no, there was nothing going toward Bloody Pond Road.

Chairman Santiago opened the comments to the audience.

Kevin Mulcahy asked if the parking area would service both these areas.

Attorney Meyer stated that as approved for a flower shop there were six spaces existing.

Kathy Bozony: "Is this going to be called an accessory structure on this property?"

Kevin Mulcahy stated he felt it would be a second primary residence.

Kathy Bozony: "And it's permitted in this zone?" You started to touch on the additional sewer connections needed for this. Whether or not it is available in the Town of Lake George or not; that needs to be addressed. If this variance is granted, I would ask that a condition be made for no further expansion of this property including the size of this dwelling. I don't know if this would go for Site Plan Review or not and whether there would be stormwater management that needs to be addressed. In looking at the area, I look at a lot of lawn and asphalt verses vegetation and I would ask that the property be vegetated more and to possibly reduce that existing driveway. There is a lot of asphalt on that property and without six parking spaces needed, maybe some of that could go away and become some nice vegetated native plants. Thank you."

A motion was made by Grant Gentner and seconded by Janie Green to close the Public Hearing.

All in favor.

Motion carried.

Kevin Mulcahy stated he had the same thought as Kathy did about the sewer connections, but he has nothing in front of him that there are no sewer connections and until they work this out, he can not use this as a criteria for the application.

Chairman Santiago asked what plumbing was in the building currently.

The owner stated there is no plumbing and they took water from the other building to run the flower shop.

Kevin Mulcahy stated the plans show a connecting ramp from the other parcel to that garage.

Chairman Santiago asked if the buildings connect.

Suzy Tyrer stated it is a shelter walkway.

Chairman Santiago asked if this would be removed.

Suzy Tyrer stated the purpose of it was a shelter to go from the house to the flower shop without having to go around. She has no problem removing the breezeway if the board wishes.

Kevin Mulcahy stated at this point, he would be okay with the breezeway however, if they were to sell the two properties separately, it should be removed.

A motion was made by Kevin Mulcahy and seconded by Janie Green to approve with the conditions that the Planning Board assess the sewage requirements and that the board recommend to the Planning Board to review screening from Bloody Pond Road with vegetation.

Kevin 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.

No. The buildings remain the same. The impervious area remains the same. The modification is internal and there is not a change in appearance to the neighboring properties.

- 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.

No. The building is there, it is a simple conversion from commercial to residential and requires an area variance for the existing conditions.

- 3) Whether the requested area variance is substantial.

No. It is pre-existing.

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

No. The building already exists in a non-conforming location.

- 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.

It is self-created however, residential occupancy is a permitted use in that district.

Kevin – Yes

Grant – Yes

Janie – Yes

Bob – Yes

John – Yes

Motion carried.

5. Area Variance Application #25-2009 submitted by James and Karin Giacone to extend first floor 3 feet out and 9 feet on the left side to increase first floor by approximately 275 square feet. To add new second floor (31x20), and move out deck 3 feet from existing deck line. There will be no increase in bedrooms. The applicant is requesting a 29 foot front yard setback. The deck will be 8'6" from front property line where 37 ½ is required; a right side variance of 5 feet is requested. The house will be 10 feet from the property line where 15 is required, for property located at 3 Westover Loop (238.20-1-20).

Bob Risman read the application into the record.

A motion was made by Grant Gentner and seconded by Kevin Mulcahy to accept the application as complete.

Kevin – Yes

Grant – Yes

Janie – No

Bob – Yes

John – Yes

Motion carried.

James and Karen Giacone were present.

James Giacone stated he purchased this property in 2003. Over the past few years, they have been working to try to design something to make the house fit the lot. They are a family of 5 and the house is tight. He stated this is a non-conforming use in the area. He explained the variances sought and stated they were relocating a bedroom from the first floor to the second floor. He stated they did not want to add another bedroom so they would stay in compliance with the Association rules.

Chairman Santiago stated there is a letter on file from the Westover Homeowner's Association approving the project on behalf of the Association.

Kevin Mulcahy stated he feels this is excessive and the second floor is extremely massive for one bedroom. He stated the building could be a cape style, reduce the roof height, and it would be more appropriate for one bedroom. He stated this could very easily be converted into three bedrooms.

Bob Risman asked if this was a community septic.

Mr. Giacone stated they share a septic with 5 houses.

Kevin Mulcahy stated that the second floor should be reduced as the board should be granting the minimum variance needed and this is way more than what is needed for the use. The second floor is 500 square feet and that could accommodate three bedrooms.

Grant Gentner stated he is not in favor of encroaching any further onto the property lines of this parcel.

Chairman Santiago opened the comments to the audience.

Kathy Bozony: "I also looked at the floor plan for that second floor and regardless if the variance is granted, the onsite wastewater treatment needs to be looked at. This should be sized for a three bedroom home minimum and by saying we're not increasing the bedrooms is not doing anybody any favors because we're really interested in whether or not our wastewater treatment works. This is very close to the lake. I don't know the property very well, but it looks like there is ledge rock there. I also would support any renovation of this project. I presume it will go to Site Plan Review, but I would support stormwater management and a planting plan with native species from the applicant would be very beneficial. Thank you."

Bob Risman stated this character of the neighborhood is beginning to change. All the properties are expanding. This property will be out of character of being a log cabin.

Mike Seguljic: "Regarding the 500 square foot bedroom, that's half the size of my wife's and my three bedroom house. Thank you."

A motion was made by Grant Gentner and seconded by Bob Risman to close the Public Hearing.

All in favor.

Motion carried.

Chairman Santiago stated this is the plan that the applicant has presented and this is the plan the board is reviewing. They are not reviewing a plan that is imaginary or not there. The Westover Homeowners' Association has to deal with the ramifications if the septic systems are not capable of handling this. He also stated that Kevin had a good point that they are looking at the minimum variance and this may be excessive for what they are looking to do.

Kevin Mulcahy stated this is being presented as a two bedroom with expansions on the footprint. The board is supposed to grant the minimum variance allowed and this is excessive for the minimum that would be necessary for a functional two bedroom house.

Bob Risman stated that whether or not this applicant expands or doesn't expand, you will still have two adults and three children in this home.

Chairman Santiago asked the applicant if they wanted to scale back the project and come back next month with a new plan.

Mr. Giacone stated they would consider where they could make changes to hopefully have the board look more favorably on the project.

Kevin Mulcahy stated the roofline could be lowered rather than be a full 8 foot sidewall. This could be accomplished with a single bedroom upstairs easily by going to a more chalet design.

Grant Gentner stated he feels this is too large. Westover is a tight community. He is not in favor of expanding any closer to the lot lines.

A motion was made by Grant Gentner and seconded by Bob Risman to rescind the motion to close the Public Hearing.

All in favor.

Motion carried.

The applicant stated they will try to rework the plans and come back in December.

The board stated they are concerned with the size of the second floor addition.

6. Area Variance Application #26-2009 submitted by Francis X. Sause to construct an 18x26 foot deck on existing structure. The existing structure is 23 feet from the road. A 50 foot setback is required. A 33 foot variance for structure and deck is requested, for property located at 3382 Lake Shore Drive (238.08-1-86 and 238.08-1-87).

Grant Gentner read the application into the record.

A motion was made by Bob Risman and seconded by Kevin Mulcahy to accept the application as complete.

All in favor.

Motion carried.

Frank Sause was present. He stated this is a deck addition to his biggest unit. He stated this is the only weekly rental unit he has that does not have a deck.

Chairman Santiago opened the comments to the audience.

There was no public comment.

A motion was made by Grant Gentner and seconded by Janie Green to close the Public Hearing.

All in favor.

Motion carried.

A motion was made by Grant Gentner and seconded by Bob Risman to approve.

Grant 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.

No. The owner owns all contiguous lots.

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.

No.

3) Whether the requested area variance is substantial.

No. It is a small deck addition on pilings and does not create any impervious surfaces.

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

No. It's present use is as a motel and this just adds to the aesthetics of the property.

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.

No. This property was subdivided in 1925.

Kevin – Yes
Grant – Yes
Janie – Yes
Bob – Yes
John – Yes

Motion carried.

A motion was made by Grant Gentner and seconded by Janie Green to adjourn the meeting at 8:30 p.m.

Respectfully submitted,

Patricia McKinney
Planning & Zoning Clerk