

Minutes of the Town of Lake George Zoning Board of Appeals meeting held on December 5, 2018 at 6:00 p.m., at the Town Center, 20 Old Post Road, Lake George, New York.

Members Present: Gary Moon, Chairman of the Board
Karen Hanchett, Vice Chairman
Tom Jenne
Denise Paddock
Mohammad Tariq, Alternate

Absent: Bob Risman

Also Present: Dan Barusch, Adele Behrmann, Kristen DePace, Andy Caruso, Tony DePace, Linda and Andy Caruso, Curt Dybas, Frederick and Joanne Zalucki and others.

Chairman Moon opens the meeting at 6:05 p.m.

Acceptance of the Minutes

A motion is introduced by Tom Jenne; seconded by Karen Hanchett to accept the minutes of the September 5, 2018 meeting as complete.

All in favor, motion carries.

PUBLIC HEARINGS

1. Application for Area Variance AV11-2018 submitted by Kristen DePace for an after-the-fact installation of an 80 ft. privacy fence. The relief requested is for 3 ft. where a 30 ft. stream setback is required and 27 ft. is existing; for property located at 14 Sand Pebble Cove. Tax Map No. is 251.16-1-15. Lot size is 0.36 acres. Zoning Classification is RS-1. Code References are 175-23, 175-28.1 & 175-34. SEQRA is Unlisted.

Tom Jenne reads the application into the record.

A motion is introduced by Chairman Moon; seconded by Mohammed Tariq.

All in favor, motion carries.

Kristen DePace begins by stating that her reason for wanting the property line fence is to block road noise from Route 9L, privacy and gain more useable space however the company she used to install the fence never told her that a permit was needed as well as not being aware of the classification of a stream on her lot until DEC classified it as an AA Special stream but only after the fence was installed. Chairman Moon questions the height of the fence, Ms. DePace responds that on the southern end of the property some sections of the fence are higher than 6 ft. and she'll lower them to the appropriate height.

Dan informs the Board that this is an after-the-fact application and it was reported by a neighbor, Mr. Ohnigians. The Town Code's definition of a structure includes fences therefore a minimum setback of 30 ft. needs to be maintained from the stream although it is correct that at one time this particular stream was not classified. In order to get the record straight, he reached out to DEC who after a review by a wetland, certified biologist, Jim Pinheiro, classified the stream as an AA stream and a stream shown on a map submitted by the Ohnigians as a seasonal drainage course flowing from the neighbor's property on to the stream on Ms. DePace's property and ultimately in the lake. A brief discussion among the Board Members and Dan Barusch arises over the stream and the fact that it had not been classified prior to the installation of the fence. Dan Barusch explains that as per DEC all water bodies and streams are classified. As per the Town Code, the setback of 30 ft. applies only to AA Special streams and the fact that it is located in the shore land overlay district stands the reason why a

variance and site plan review are needed in this particular case. All pertinent documents have been sent to the Board Members for their review and except for the stream setback the only other concern is the height of the fence where at certain points is over 6 ft. (top of the fence to finished grade). The applicant states that since most of the fence is at 6 ft., she will lower the panels exceeding the required height of 6 ft.

A question arises from the Board pertaining to landscaping. Ms. DePace replies that she obtained quotes from 4 companies about implanting trees instead of a fence but none of them would guarantee that they would live because of the lack of sunlight on the site. Karen Hanchett asks if the applicant has brought in fill onto the neighbor's property, Ms. DePace replies that she only dug on her side but the neighbor is digging around every post on his side of the property.

Dan Barusch explains that this application is seeking setback relief from the stream only and not the height of the fence however the Board can issue a conditional approval that the entire height of the fence doesn't exceed 6 ft.

Chairman Moon opens the public hearings.

Fred Zaluki approaches the microphone and states that the stream is active year around in fact in the spring it is even more active because of the run off. He strongly believes that a reputable fence company would have brought up the fact that a permit is needed and believes that this project was mismanaged from the beginning. He states that he is concerned about the stain on the fence, specifically the panels that go over the stream; is the stain sealed? Will it run off into the stream and ultimately into the lake? No other property owner in the neighborhood has a fence and suggests that the fence should be either taken down or looked at further.

A motion is introduced by Tom Jenne; seconded by Karen Hanchett to acknowledge that the Board has received and reviewed comments sent in by the Ohnigian & Hitik families not in support of the project as well as comments from Frank Parillo, William Morris and Kathleen Ledingham writing in support of the project (copies of the comments are part of the record and on file with the Planning & Zoning office).

All in favor, motion carries.

A motion is introduced by Chairman Moon; seconded by Tom Jenne to close the public hearing.

All in favor, motion carries.

Dan Barusch reiterates as follows:

- The drainage channel on the neighbor's property is in fact a non-classified stream.
- The Town is aware that a section of the fence is over the drainage channel but, as mentioned before, since it is not a classified stream the setback doesn't apply.
- As for the panels over 6 ft. in height, a condition of approval can be imposed by the Board to lower them to the required height.
- He cannot comment on the stain on the fence but does confirm that over the years he has seen how several fence companies are aware of the needed permit but deliberately don't always notify the client.
- The fact that no one else has a fence in the neighborhood doesn't preclude Ms. DePace to exercise her private property rights and have one.

Chairman Moon reads Part II of the SEQRA into the record. (A copy of the SEQRA is attached).

A motion is introduced by Chairman Moon; seconded by Tom Jenne to declare a Negative Impact SEQRA.

Ayes: 5 Tariq, Jenne, Hanchett, Paddock, Chairman Moon
Nays: 0
Absent: 1 Risman

All in favor, motion carries.

A motion is introduced by Tom Jenne; seconded by Denise Paddock to grant Area Variance AV11-2018 based on the following criteria and that the entire length of the fence shall be no higher than 6 ft. from finished grade without the need for a variance:

- 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, only one neighbor has expressed a visual impact from this fence.

- 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 applicant pursued what she thought was an acceptable method.

- 3) Whether the requested area variance is substantial.

No, the distance of 3 ft. is not substantial.

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

No, since the applicant's only disturbance to the property is the disturbance of the soil where the posts were dug.

- 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, the applicant was told by the fence company that no permit was needed and DEC did not declare it as an AA Stream therefore she pursued a project she thought was legitimate.

A discussion ensues about the height of the fence; Dan Barusch suggests that it can be resolved by issuing a conditional approval that the two southern panels of the fence be lowered to a 6 ft. height.

Kristen DePace adds that the middle section of the fence when it was installed was leveled with the dirt; the 5 or 6 inches gap in the middle came about when the neighbor dug the dirt. The southern section is obviously higher off the ground and she'll lower it.

Ayes: 5 Tariq, Jenne, Hanchett, Paddock, Chairman Moon
Nays: 0
Absent: 1 Risman

All in favor, motion carries.

2. Application for Area Variance AV12-2018 submitted by Andy & Linda Caruso with a proposal of an 11 ft. x 14 ft. first floor addition to create a master bedroom. Relief requested is for a side yard setback of 1.0 ft. where 7.5 ft. is required and 2.9 ft. is existing. The second relief is for increasing the non-conformity of a pre-existing, non-conforming structure; for property located at 82 Sewell Street. Tax Map No. is 264.06-3-5. Lot size is 0.13 acres. Zoning Classification is RCH. Code References are 175-16 & 175-64. SEQRA is Type II.

Karen Hanchett reads the application into the record.

A motion is introduced by Denise Paddock; seconded by Tom Jenne to accept the application as complete.

All in favor, motion carries.

Andy Caruso states that he is simply asking to put an addition on the house in order to have a master bedroom on the first floor due to their ages. Approximately three sections of the existing fence and the gate will be cut out to accommodate the addition however it will be put back up once the addition is completed. He informs the Board that he spoke with Mr. McGhee, the attorney for the HOA, about their comments' letter. The first request on the letter is to "reasonably restore the property" which will be done; second request is to "provide proof that the project is not encroaching on their property;" he advised them that he will submit a survey and stake out the corner in question within 1 ft. prior to construction. The third comment is a request for a certificate of insurance which will be provided and handled by the contractor. He also met with Prospect Heights' property Manager, John Brower to review the project with him prior to submission. Karen Hanchett asks clarification of the proximity of the addition to the property line; Mr. Caruso states that the distance from the crawl space foundation wall to the property line will be 1 ft. He will have the roof line cut back since the overhang is inches from the property line. Karen Hanchett reminds him that adding gutters to the current roof line will put him over the property line and questions the runoff from the roof with part of it going onto the side property; Mr. Caruso replies that there will be a wraparound gutter with a down spout on his property. He reaffirms that the roof line cut back so when the gutters are added they will not be encroaching.

Tom Jenne confirms with the applicant that he obtained a variance of 2.9 ft. in 2003 for an addition and adds that this variance erased the non-conformity of the site; Dan Barusch agrees but adds that a setback variance is still needed for this project.

Chairman Moon opens the public hearing with no response.

A motion is introduced by Chairman Moon; seconded by Karen Hanchett to close the public hearing.

All in favor, motion carries.

A motion is introduced by Chairman Moon; seconded by Tom Jenne to approve Area Variance AV12-2018 with the following conditions:

- **The Applicant shall restore the property belonging to the Prospect Heights Condominium Association upon completion of the project.**
- **The Applicant shall provide the Prospect Heights Condominium Association an "as built" survey of the common property lines.**

The approval is as per the following 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, given the location and the scale of the addition and the adjacent property acting as a buffer zone against the nearest neighbors' residence, it doesn't appear to present any detriment to nearby properties. The character of the neighborhood will not be affected either.

- 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, due to the small size of the lot and limitations of the existing structure and their desire to maintain a first floor aspect, there is no optimal solution for the applicants that wouldn't increasing building costs or involve an area variance.

- 3) Whether the requested area variance is substantial.

No, the dimensions and the scope of this variance are minimal. The setback is already a non-conforming one and as the applicant pointed out, the buffer of the adjacent right-of-way reduces the impact to the neighbor's property.

- 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 impermeable surface area of the property doesn't increase substantially and the stormwater controls are planned.

- 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, the difficulty associated with this variance application is the result of the pre-existing nature of the building and the property which date from the 50s before the current zoning regulations; it places practical limits on the owner's expansion options.

Ayes: 5 Tariq, Jenne, Hanchett, Paddock, Chairman Moon
Nays: 0
Absent: 1 Risman

All in favor, motion carries.

A motion is introduced by Karen Hanchett; seconded by Tom Jenne to adjourn the meeting at 7:30 p.m.

All in favor, motion carries.

ITEMS OF DISCUSSION

The Board Members thank Tom Jenne, whose term on the Board has expired, for being a valuable member of the Zoning and Planning Boards and present him with a Certificate of Appreciation.

Respectfully Submitted,

Adele Behrmann
Planning & Zoning Clerk

Short Environmental Assessment Form
Part 1 - Project Information


Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Kristen DePace			
Name of Action or Project: Kristen DePace <i>fence</i>			
Project Location (describe, and attach a location map): 14 Sand Pebble Cove, Lake George, NY			
Brief Description of Proposed Action: Install approximately 80' of wood privacy fence.			
Name of Applicant or Sponsor: Kristen DePace		Telephone: 518-791-2749	
		E-Mail: kristen@chicamarina.com	
Address: 14 Sand Pebble Cove			
City/PO: Lake George	State: NY	Zip Code: 12845	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Town of Lake George permit.			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		0.40 acres	
b. Total acreage to be physically disturbed?		0.0 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		0.40 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: <u>Lake George</u>	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	b. Are public transportation service(s) available at or near the site of the proposed action?		
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies:	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ N/A	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ N/A	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input checked="" type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
<p>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: <u>Kristen DePace</u> Date: <u>10/24/2018</u></p> <p>Signature: <u></u></p>		

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