

ZONING BOARD OF APPEALS
TOWN OF LEWISBORO
MINUTES

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, February 26, 2014 at 7:30 p.m., at the Town of Lewisboro Offices at Orchard Square, Cross River, New York 10518.

Board Members:	Present:	Carolyn Mandelker, Acting Chair Jason Krellenstein Robin Price, Jr. Thomas Casper
	Absent:	Geoffrey Egginton

Also Present: Aimee Hodges, ZBA Secretary

The Meeting was called to order at 7:30 P.M. Mrs. Mandelker introduced the members of the Board and noted the emergency exits. She announced that the next ZBA meeting is scheduled for Wednesday, March 26th with a site walk scheduled for Saturday, March 22nd.

I. Review and adoption of the Minutes of January 29, 2014

Mr. Price moved to adopt the minutes of January 29, 2014. The motion was seconded by Mr. Krellenstein; In Favor: Mr. Krellenstein, Mr. Price, Mrs. Mandelker and Mr. Casper. Absent: Chairman Egginton

II. PUBLIC HEARINGS

CAL. NO. 04-14-SP

Application of Lee Legenzowski & Robyn Bonder Legenzowski, 8 Lorraine Road, South Salem, NY 10590 [Subject Property: Laurel Pond, Smith Ridge Road, South Salem, N.Y.] for the renewal of a Special Permit pursuant to Article IV, § 220-23A (9) and Article V, § 220-38 of the Zoning Ordinance to allow the storage of Contractor's Equipment.

The property is located on the east side of Smith Ridge Road, designated on the Tax Map as Sheet 49C, Block 9834, Lot 6, in an R-1A, One-Acre Residential District.

Lee Legenzowski was present.

There were no objections to the notice of public hearing. The Board acknowledged receipt of the February 10, 2014 inspection report filed by Deputy Building Inspector Paul Bauer confirming the equipment stored on site and noting that the site was well kept.

Mr. Legenzowski confirmed that the site is in conformance with the original approval.

Mr. Krellenstein advised that he would be abstaining from the vote as he had represented Mr. Legenzowski in the past.

Mrs. Mandelker moved that the application for the special permit renewal for the storage of contractor's equipment be granted for a period of two years as it meets the criteria of the Zoning Ordinance for a Special Permit. The motion was seconded by Mr. Price; To Approve: Mr. Price, Mrs. Mandelker and Mr. Casper. Abstain: Mr. Krellenstein. Absent: Chairman Egginton.

CASE CLOSED

Cal. NO. 06-14-BZ

Application of Pamela Weinzapfel and Erick DeMartino, 40 Hunt Farm Road, Waccabuc, New York 10597 for a variance of Article IV § 220-12E(1) of the Zoning Ordinance in the matter of a proposed six foot high (6') privacy fence, where four feet (4') is permitted in the Hunt Farm Conservation Subdivision.

The property is located on the north side of (#40) Hunt Farm Road, and designated on the Tax Maps of the Town of Lewisboro as Sheet 20A, Block 10801, Lot 140 in an R-1A, One Acre Residential District.

Eric DeMartino was present.

There were no objections to the notice of public hearing.

Mr. DeMartino advised that this is an application for a variance to replace an existing six foot fence between his property and property owned by the Harrington's who had no objection. The Architectural Control Committee confirmed their approval in a January 23, 2014 e-mail. He referred to the plans submitted and advised that the fencing is almost identical to the existing fence.

Mrs. Mandelker advised that the Board walked the site on Saturday, February 22nd.

Mr. Price noted that the applicant is seeking to add a ten to fifteen foot piece to the house.

Mr. DeMartino advised that they would also be adding some low vegetation that would not require sunlight. He indicated that a recent survey showed that the existing fencing was six feet in from the property line; the only difference from the original fence is that the fence would be moved over several feet so that it would be on the surveyed property line.

Milissa Martin, 38 Hunt Farm Road advised that her house looked directly at the fence. She asked that the Town to stick to the ordinance and further advised that no one from Hunt Farm spoke to her about the application. She indicated that she preferred that there be no fence advised that she was denied a fence and told that she could achieve what she was looking to do with vegetation. She noted that this is an existing fence without a variance.

Mr. Casper questioned where her house was located in terms of the applicant's residence. The Board referred to the tax map and noted the location of Ms. Martin's residence house as being one house over from the applicant's and next door to the Harrington's residence [who had no objection].

Mr. Price questioned whether Ms. Martin had ever complained previously about this fence to the Town.

Ms. Martin advised that she spoke to Mr. Barrett in passing when discussing a fence that was next to hers.

In response to Ms. Martin's objections, Mr. DeMartino noted that a similar variance was granted to the Price residence, also located within the cul de sac. In addition, several other variances for fences had been granted to other residences within the Hunt Farms subdivision.

Mr. Casper moved to approve the application as presented for the following reasons:

- There will be no undesirable change to the character of the neighborhood or detriment to any nearby properties.
- There may be a practical alternative but the Board finds that the requested variance is not substantial.
- There is no adverse effect or impact on the physical or environmental conditions of the neighborhood.
- The Board does not believe that the difficulty is self-created.

The motion was seconded by Mr. Price; In Favor: Mr. Krellenstein, Mr. Price, Mrs. Mandelker, and Mr. Casper. Absent: Chairman Egginton.

Ms. Martin questioned what the purpose of having the four foot restriction on fencing in the ordinance was and whether six foot fences are allowed now.

Mr. Casper suggested that this was a good question for the Town Board as they enact the code. He explained that the Zoning Board of Appeals granted exceptions to the code.

Mrs. Mandelker advised that each case is taken into consideration and in context; some applications for fences have been approved and some denied.

CASE CLOSED

Cal. NO. 05-14-BZ

Application of Stephen J. & Betty A. Ackilli, 65 Cove Road, South Salem for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the construction of (1) Rear patio and shed closer to the rear property line (6' 21" at closest where 25' is required) and closer to side property line (3' where 12' is required), (2) Side sidewalk closer to the side line (10' 8" where 12' is required) and (3) Front Sidewalk closer to front property line (18' 2" where 25' is required) in an R-1/4A Residential District.

The property is located on the south side of (#65) Cove Road, and designated on the Tax Maps of the Town of Lewisboro as Sheet 33A, Block 11366, Lots 4 & 5 in an R-1/4A, One Quarter Acre Residential District.

Stephen and Betty Ackilli were present.

There were no objections to the notice of public hearing.

Mr. Ackilli displayed and reviewed the proposed site plan.

Mrs. Mandelker advised that the Board visited the site on Saturday, February 22nd.

Mr. Ackilli noted that as a result of the site visit that he would be installing a smaller shed under 64 s.f. that would not require a variance; the variance requested shed was withdrawn.

Mr. Price noted that a variance for the sidewalks were required because the flagstones were being placed on concrete, not on crushed stone so they are now considered part of the structure.

Mrs. Mandelker noted that this is a lake community and further noted that the neighboring properties to the rear are on a higher elevation; she asked the applicant to speak to the concern regarding runoff.

Mr. Ackilli advised that all of the roof drains are being drained to 350 gallon cultecs, which is similar to a dry well. In addition it is his intention to install an area drain to handle any runoff from the patio.

Robert Reynolds, 59 Cove Road questioned what size shed was being proposed now and what variance the applicant's had for the shed that was to be removed and was advised that the existing shed was being removed. A Certificate of Occupancy would not be issued by the Building Inspector until the shed is removed.

Mary Lou Smith, 57 Cove Road noted that the house under construction is huge and questioned why the applicant did not have the foresight to request the variances when the project started. It was her belief that the house might not have been so big if he had the hindsight of what he wanted to do.

Jeannette Maiorino, 59 Cove Road submitted photographs depicting the view from her home before and after the construction of the Ackilli residence. In addition, she submitted a map entitled Lake Waccabuc Association Rights-of-Way. She concurred with Ms. Smith's concern as to why the additional incursion was not considered at the beginning of the project. Ms. Maiorino referred to the map, noting the peninsula outlined in pink; she advised that the Ackilli's have built a house on steroids, there are two other homes under construction next to Ms. Smith's property and one other project that will be underway. She advised that they are concerned with "steroid" building in this area.

In response to a question of Mrs. Mandelker as to how the neighbors will be affected by the patio, Ms. Maiorino advised that they have no fencing or privacy. She further noted that because the property was excavated there is a huge drop down from her property to the Ackilli property causing her to need to install a fence.

Mr. Ackilli advised that the finished grade of his yard has not changed. Ms. Maiorino's property is at the same elevation that it was before.

Mr. Reynolds expressed concerns as to what the other neighbors would ask for if the variances continued to be extended.

Mr. Price reminded the neighbors that this house did not require any variances. He further noted that most of the houses in this area had sidewalks.

Mr. Krellenstein observed that the neighbor's real objections were relative to the size of the house and suggested that they bring their concerns to the Town Board and ask that the code be amended to prohibit the "steroiding" of the neighborhood. The actual variances being requested are small.

Mr. Reynolds continued to question when the shed and fence there without variances would be removed. He further stated that he objected to the small variances being sought.

Mrs. Mandelker summarized the February 25, 2014 e-mail of opposition from Tara Owen and the February 20, 2014 e-mail of concern from Jennifer Hammerstein.

Mr. Krellenstein questioned whether any of the residents concerned about the construction occurring in the neighborhood made any of their concerns known to the Town Board. He noted that he was not unsympathetic to their concerns but did not see anything that would prevent the small variances from being granted. The real objections that he heard were with regard to the massive houses being constructed in their neighborhood and suggested to them that there was a path that could be taken to correct the issue.

Ms. Maiorino recounted how she objected to the previous application and later learned from the Building Inspector that the applicant had withdrawn his plans and submitted new ones that no longer required a variance.

Ms. Smith advised that she never mentioned the house other than to say if the house was smaller that he would not need the variances he was requesting now. She further expressed concern with the runoff and questioned why he would not utilize sand or stone dust rather than cement which would protect the lake.

Milissa Martin, 38 Hunt Farm Road stated that there were ordinances in this Town that get violated and believed that it was unfair that the neighbors are asked whether they asked that the ordinances be changed. She suggested that those who wanted a variance should be the party requesting the code changes.

Mr. Casper noted that he had seen patios constructed utilizing stone dust which allowed for percolation. Given the concerns with runoff, he asked whether the applicant would consider this method rather than cement.

Mr. Ackilli advised that he would only consent to this if this was the only way the Board would approve the patio.

Mr. Casper advised that he would approve the application with the condition that the patio be constructed with stone dust rather than cement. Mrs. Mandelker agreed.

Mr. Price suggested that the applicant construct the patio with stone dust or stone dust aggregate and the front and side sidewalks be constructed with concrete negating the variance for the patio.

Mr. Casper moved to approve the variances for the front and side sidewalks as presented for the following reasons:

- There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
- The Board determined that there is no practical alternative.
- The Board has determined that the requested variances are not substantial.

- There is no adverse effect or impact on the physical or environmental conditions to the neighborhood or district.
- The difficulty is not self-created.
- The applicant has withdrawn the variances requested for the shed and the patio.

The motion was seconded by Mrs. Mandelker; In Favor: Mr. Krellenstein, Mr. Price, Mrs. Mandelker and Mr. Casper. Absent: Chairman Egginton.

CASE CLOSED

CAL NO. 03-14-BZ

Application of The Three Lakes Council, Inc., c/o David O. Wright, Esq., 2025 Crompond Road, Yorktown Heights, NY 10598 [Owner of Record: Rudolph Petruccelli, 21 Halsey Place, Valhalla, NY 10595] pursuant to New York State Town Law §267-a (5) (b) and the Town of Lewisboro Zoning Ordinance §220-74E (4) in the matter of an appeal from the decision of the Building Inspector.

The property is located on the westerly side of Oscaleta Road, designated on the Tax Map of the Town of Lewisboro as Sheet 33B, Block 11157, Lot 46, in an R1/2A, One-Half Acre Residential District.

David Wright, Esq. was present representing The Three Lakes Council, Inc. and Harold Rosenbaum.

There were no objections to the notice of public hearing.

Mr. Wright advised that this is an appeal of the Building Inspector's determination of Section 220-10E(2)(a) of the Town of Lewisboro Zoning Ordinance. This section of the code requires that any new lot created by subdivision meets a minimum lot area. This minimum lot area since 2004 cannot count wetlands and steep slopes. This particular lot complies in terms of gross square footage in zoning and area, but if one subtracts the Town and NYS DEC wetlands and wetland buffer, that is 100% of the lot.

Mr. Casper noted that he did not see Mr. Rosenbaum on the application; Mr. Krellenstein advised that his name is on the first page of the appeal annexed to the application.

Mr. Casper stated that there are certain procedural thresholds for applications one of which is timeliness. He stated that he would prefer to decide the timeliness of the appeal first.

Mr. Casper moved to determine the timeliness of the appeal prior to hearing the substance. The motion was seconded by Mr. Krellenstein; In Favor: Mr. Krellenstein, Mr. Price, Mrs. Mandelker and Mr. Casper. Absent: Chairman Egginton.

Mr. Krellenstein questioned why the October 23, 2012 minutes of the Planning Board were not adequate notice of the 60 day clock starting?

Mr. Wright advised that his February 26, 2014 written response provided the explanation that Mr. Rosenbaum was not at that meeting and had no idea of anything about the meeting. With respect to the Three Lakes Council, the argument was that Janet Andersen was at that meeting and would therefore have known that there was a "determination" by the Building Inspector. He advised that Ms. Andersen is present this evening should there be a hearing to state that she did not realize that there had been a determination. Mr. Wright submitted an affidavit from Mr. Rosenbaum, who because of his employment

was unable to be present this evening, verifying that he is an appellant and that he was not aware of the challenged determination of the Building Inspector at any time prior to November 19, 2013.

Mr. Krellenstein questioned whether the standard was whether he knew or whether he should have known. He called his attention to the case of Plattsman, which cites McKinney's commentaries and discussed that he should have known by diligence particularly when there is correspondence between him and Mr. Petruccelli for years on the subject.

Mr. Wright advised that he had read all of the cases in the McKinney's commentaries on this point, noting that there are several gradations of notice. The fact patterns of the cases are uniform, a neighbor sees a bulldozer for an application where there could have been an approval or interpretation by a Building Inspector that goes back years prior. The question is whether that neighbor should have known about this activity by newspapers: that's not enough to give notice. But it comes to a point where one sees construction activity and a structure, then one has a duty of due diligence. He challenged anyone to find him a case that was not on that track.

Mr. Krellenstein believed the case with Ms. Andersen is simple, but that the case with Mr. Rosenbaum was more difficult and cited 706 N.Y.S.2d 846.

Mr. Wright submitted copies of Mr. Rosenbaum's signed affidavit signed February 21, 2014. He asked that Ms. Andersen be allowed to give a statement to the Board.

Janet Andersen, President of Three Lakes Council advised that she attends Planning Board meetings in her capacity as Chair of the CAC and was present at the October 23, 2012 meeting. In this circumstance, she had heard this as an assertion of the applicant. It was not until the November Board meeting when the attorney for Mr. Petruccelli stated that there has been a determination of the Building Inspector and that it could not be changed. After this, Ms. Andersen asked for and received a copy of the e-mail from the Planning Board Secretary. It had been a source of confusion as to why the rules of subdivision did not apply, but she stated that she was unaware that there had been a determination.

In response to a question of Mr. Price, Mr. Wright advised that the Building Inspector made the determination that the provisions of Section 220-23E did not apply in this case, not whether this lot is a legal lot. He stated that there were no reasons stated for this determination, and it is not clear as to why the determination was made.

Mr. Price noted that even though it may have been deemed a buildable lot years prior, the applicant would still need to meet today's building code and wetland regulations to build the structure. In this case, this requires the review of the Planning Board. The question before this Board may be moot.

Mr. Wright agreed, but the applicant has also applied for subdivision approval as well as for the wetland permit. As soon as his clients found out about this determination they had 60 days, which was a Saturday. The next business day was a Tuesday and he rushed to the Town offices to file the appeal. This is an issue that affects not just this lot, but a decision that is applicable on a town wide basis.

Mr. Krellenstein believed that the Building Inspector made his determination because this was not a "new" lot. It was created before the current code.

Mr. Wright stated their argument was that it could not have been a lot because it did not comply Real Property Law 334, and there were no subdivision plats filed with Westchester County or the Town of Lewisboro. He questioned why Mr. Petruccelli is seeking a subdivision approval after that decision had been made; 60 days ran and he did not appeal it.

Mr. Krellenstein observed that even though the lot may not have been created via a legal subdivision filings, it has some indicia as a lot; he paid taxes on it, treated it as his own lot and fought hard to build a house on it.

Mr. Wright referred to the Town of Lewisboro code which stated that no new lot can be created or established except by subdivision. If anyone went to apply for a building permit under this code, they would have to be denied.

Michael Sirignano, counsel for Rudolph Petruccelli, referred to N.Y.S. Town Law Section 276-1(5)(b), which sets a 60-day time limitation. In the case where a building permit is pulled and the property owner does not break ground for six to eight months, the courts have agreed that the 60-day time limit would not shut the door on an appeal because the neighboring property owner would not have known. Mr. Sirignano did not agree that this would apply in this instance as the adjacent property owner is Three Lakes Council. Janet Andersen specifically stated at the October 2012 Planning Board meeting that “she is President of Three Lakes Council who owns the abutting parcel and recused herself in the capacity of CAC Chairwoman.” Noting that Ms. Andersen was sitting in the audience that evening, Mr. Sirignano continued to read from the October 2012 minutes “Mr. Johannessen advised that his office raised the question as to whether the lot would need to comply with the current zoning regulations pertaining to the contiguous buildable area. The .69 acre lot is located within the R-1/2A Residential District and meets the gross area requirements but given the wetlands on the property, it does not meet the requirements with respect to contiguous buildable area of 20,000 s.f. He noted that he spoke with Planning Board counsel and asked the Building Inspector for an interpretation as to whether this lot would need to comply. In an e-mail, Mr. Barrett determined that ‘the lot does not need to comply with today’s code because it is not a new lot and the Planning Board is now legalizing the lot’.” Mr. Sirignano pointed out that Mr. Petruccelli did not seek this interpretation, the Planning Board consultant asked for it. It is clear that the Three Lakes Council through its president was at this meeting and more than 60 days went by with no filing before this Board. He stated that the appeal by the Three Lakes Council must be summarily dismissed.

In the case of Mr. Rosenbaum, it was Mr. Sirignano’s opinion that he may in fact be a second client of David Wright, but this does not make him an applicant before this Board. He further stated that there is no such legal “creature” as a notice of appeal. The jurisdictional document is the pink application form and nowhere listed on the pink application filed is Mr. Rosenbaum’s name. Harold Rosenbaum is not named in the appeal and his name was not published in this Board’s legal notice. Even if this Board deemed Mr. Wright’s letter a new jurisdictional form as something they would honor, Mr. Rosenbaum has been on notice of this application by way of repeated letters in both directions. The second letter referred to the pending Planning Board application. Mr. Rosenbaum is the next door neighbor and has been on notice since July 2010 when Mr. Petruccelli had written to him asking him to stop dumping water on his property. At that point, Mr. Petruccelli had been before the Planning Board for a permit for the test holes to test the suitability of the soils. If this Board allows Mr. Rosenbaum, who is not an applicant, to be the basis for the appeal, he has “sat on his hands” since July 2010 and as late as February and September 2013 he had written letters to the Planning Board.

Mr. Krellenstein noted that N.Y.S. Town Law Section 267-(5)(b) does not specify any particular form be used. He questioned how the appeal is defective if attached to the application form used is a document that is dated the same day, says notice of appeal and naming Harold Rosenbaum and Three Lake Council

Mr. Casper noted that both arguments are valid. He further noted that Mr. Rosenbaum did not sign anything until this signed affidavit received after Mr. Sirignano’s letter of February 18th. He further noted that Mr. Wright did not have a Notice of Appearance signed by Mr. Rosenbaum appointing him as his attorney. He believed that Mr. Rosenbaum should be present at this meeting so that he could respond to

the Board's questions. Mr. Casper advised that he was not clear as to why this appeal was filed so late in the 60 day time period.

Mr. Wright advised that is when he became involved in the appeal.

Mr. Casper advised that although he would not like to put this matter off he would like the Town Attorney to weigh in on the jurisdictional validity of the document in question.

Further discussing the application form and attachment, Mr. Krellenstein questioned how Mr. Sirignano was prejudiced if the form referenced the attachment. Mr. Sirignano continued to believe that the filing was defective. He further noted that when asked by the Chairwoman this evening if there were any objections to the notice of public hearing, counsel did not object even though his client was not named in the legal notice.

It was noted that Mr. Rosenbaum is the conductor of the Buffalo Philharmonic Symphony. Frederick Cowles identified himself as a neighbor of Mr. Rosenbaum and advised that Mr. Rosenbaum is also the Call Director of the SUNY Buffalo Chorus, which requires him to fly out every Tuesday evening/Wednesday morning returning Thursday evenings making it very difficult to attend the Zoning Board meetings. He stressed that his neighbor is very torn and is very interested in this procedure. He questioned whether there was some alternative way to speak with Mr. Rosenbaum about his lack of knowledge until the Planning Board meeting in November.

Mrs. Mandelker stated that a letter would be fine, but this Board would like to question him in an open forum. If this hearing is held over, Mr. Rosenbaum has a month to see if he can make some arrangements.

Ms. Andersen questioned whether the Board could speak to Mr. Rosenbaum during a site walk.

Mr. Sirignano objected to any conversation that is not on the record.

Mrs. Mandelker advised that the hearing would be held over to the March 26, 2014 meeting.

THE PUBLIC HEARING IS HELD OPEN.

Mr. Price moved to adjourn the meeting at 9:05 P.M. The motion was seconded by Mr. Krellenstein; In Favor: Mr. Krellenstein, Mr. Price, Mrs. Mandelker, and Mrs. Casper. Absent: Chairman Egginton.

Respectfully submitted,

Aimee M. Hodges
Secretary, Zoning Board of Appeals