

ZONING BOARD OF APPEALS

**Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – January 10, 2019
ZB 2019-1**

Present: Conti, DeCastro, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

Machelor: Take a minute to read the minutes for October 11, no meeting in November and again for December 13th.

A motion to approve the minutes of October was made by Heuck, seconded by Conti and carried. 1 abstain

Heuck Aye, Conti Aye, Machelor Aye, DeCastro Abstain, Maggard Aye

A motion to approve the minutes of December was made by DeCastro, seconded by Heuck and carried. 2 abstain

Heuck Aye, Conti Abstain, Machelor Aye, DeCastro Aye, Maggard Abstain

Machelor: This is just a general statement. I wrote it down because I think it's important for people who come to the Zoning Board understand what goes on here and why. If you have not attended a Zoning Board of Appeals meeting before the task of the Board is to grant or deny requests to vary the Town of Lewiston Code. Hence, the variance request. To allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request, the Board will grant a variance to continue the project or denial to prohibit a project as presented. In order to do that we have some pretty strict rules about what constitutes the things that we can vary and the things that we cannot vary and what the significance and size of them is. There is a lot of it in there.

Public hearing opened.

The first item on the agenda was a request from LMK Realty Associates, LLC, for a use variance from Section 360-173 (2) Prohibited signs, to allow for a 4'x8' sign on vacant property located on Ridge Road, SBL# 101.12-1-1.4. The property is presently zoned R-1, one family residential.

Machelor: We will start with the petitioner to talk about his project. Please come forward. State your name and address for the clerk.

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Nick Massaro, LMK Realty, 298 Main Street in Buffalo. My office is down here at 4880 Eddy Drive West on the Ridgeview Apartment complex. It's not so much a project but construction and placement of a sign that I'm seeking a use variance for. We would like to place a temporary modest size wood sign at the corner of 104 and Northridge Drives to advertise a patio home development that has been previously approved by the Town Board of Lewiston. That development is along Northridge Drive. Apparently a use variance is required for this request seeing that the proposed site placement is not or is off premises of the approved development along Northridge Drive. Our simple argument is that we're trying to maximize the development's exposure through street advertising and we feel that placing a modest sign along a relatively high traffic road such as route 104 would effectively do this. We know that the site is considered off premises but the actual site we're proposing this sign on is jointly owned by the principals of both the development entity and the entity that owns the property at the corner of 104 and Northridge. Both pieces of property are literally within 500' from one another. With that I respectfully ask you to consider our request for a use variance in this matter. Thank you.

Machelor: I don't want to get to deep in to the legalities. Our attorney isn't here but let me give you an example. In order to grant a use variance one of the criteria is that you cannot realize a reasonable return for your money unless we give you this variance. In other words you're building property down there, your own property and your building property you're asking us to approve a sign. One of the conditions is because you can't realize a reasonable return on your investment.

Conti: To prove that we would need a certified real estate appraiser's form filled out to show that. It's all dollars and cents. A use variance is an extremely hard thing. The 4 criteria, every criteria has to be met with the NYS Law. That is the first one. You have to have proof to show that you cannot realize a reasonable return by financial evidence.

Massaro: It's tough to quantify that.....I can say that of getting a reasonable return on an investment could directly or indirectly be related to an effective marketing campaign. I think that staking this sign on the corner of 104 and Northridge is part of that effective marketing.

Conti: But also the use variance, the property you want to put the sign on is not what you're looking to develop. Now you are actually looking for a billboard on a separate piece of property. I know they.....they are separate for legalities?

Massaro: They are separate parcels; we pay the taxes on both of them.

Conti: But they are separate parcels. You are looking to put almost a billboard to advertise something else that you're selling on another piece of property.

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Massaro: Yes it would be an advertising mechanism in the form of a modest sign, 4'x8', wood, it's temporary. It will go down as soon as we sell out the 3 phases of the development, 3 years tops.

Maggard: You call that a modest sign?

Massaro: 4'x8'?

Maggard: Yes.

Massaro: We have a similarly staked sign on that parcel advertising the Apartments at Ridgeview, same size, same scope. We would place it probably right adjacent to the existing sign that has been there for as long as I can remember. Stake it 2' high and 10' back from the right-of-way.

Machelor: The second criteria is that the hardship is unique, that there is something about your project and your property and what you're doing that is so much different than what everybody else might want to do that you can come to the Board and say, well look, this is a really different issue. Putting a sign on a piece of property, a vacant property is hardly unique. All kinds of people do that in order to advertise all kinds of things. There is nothing unique about what you're doing. That goes against you. That is under the hardship category. In other words you come and say one of the reasons I need this if I don't have this it's a hardship on me. It really isn't a hardship that anybody else created. It's just because of where your properties are. If that property didn't exist there you wouldn't be able to do it.

Massaro: You're talking about the property where the sign is?

Machelor: As Joe points out it's not on the place that you're actually marketing.

Massaro: It was not originally zoned as R-1 or R-2, not a part of the development site; not contiguous. If that was the case obviously I wouldn't be requesting a use variance. Just by the nature of the development itself I think that's kind of unique. That is the unique hardship that I guess I'm trying to convey.

Conti: Another one of the criteria since we're talking about hardship, that the alleged hardship has not been self-created. The hardship has basically been self-created because obviously you built on another piece of property that you want to advertise on this piece of property. That is a self-created hardship.

Massaro: Understood.

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Machelor: The other side is too that they are specifically prohibited. It's difficult when they've specifically said you can't do this. If it was a matter for example of size, let's say the Code you can have a sign that's 2'x3' and you came here and said could I have a sign that's 3'x3'? Then we get in to whether it's substantial and what you're asking, how much different it is than the Code and so on. In this particular case it says no signs can be on places that you don't own, advertising somewhere else. One of the reasons it's in the Code is so people who have other businesses that, for instance retail, they can put signs all over the place and say well I really need those in order to tell people they have to go down to Center Street to my store.

Massaro: I understand. I think we're slightly different and unique with our situation that the proximity of the proposed site placement and where the development for this is. It's almost like they are 2 adjacent parcels that are literally 500-600' apart from one another.

Machelor: What does the sign that's there now say?

Massaro: I believe it says "Ridgeview at Lewiston Apartments."

Machelor: Phone number and contact information and all that stuff?

Massaro: Yes. The sign that we are proposing here tonight would be similar contact information.

Machelor: What would it say?

Massaro: It would say Legacy at Lewiston Patio Home Development, coming soon. It would list my contact information. I think we are going to obtain occupancy for these homes sometime in the summer of 2019. Promotional information and general contact information. I'm not positive but I have heard that maybe there is similar precedence set for a developer or home builder over off of Wolf Run which I believe is still in the Town of Lewiston. Forbes Capretto Homes I think they were allowed to place an advertising sign along River Road which technically wasn't a part of their approved development site. That is one of the reasons why I was able to garner enough confidence to move forward for this use variance request in the first place. I would ask that you take that in to consideration.

Machelor: I guess we do but I think one of the things we do when we take it in to consideration that we remember if you do something in 2015 that you regret people come back and remind you in 2019 that you did it. I wasn't here when that happened. I don't know the facts behind it. We try to deal with each thing individually. We think in the future. We can't do too many things that are going to let other people do things as you said. On the other hand what happened in the past is done.

Conti: Every situation is unique. I'm not sure of that situation either.

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Heuck: It' a different Board, a different philosophy of what they wanted to do. Instead of adherence to the law they decided that they would go outside of it.

Machelor: We don't know how that happened.

Maggard: Have you ever tried newspapers?

Massaro: Yes. We definitely will try newspapers.

Maggard: You have the Sentinel which does not cost that much. It might be an avenue to pursue.

Massaro: Yes, we definitely will take that in to consideration.

Machelor: Your Legacy, are they condominiums?

Massaro: They are going to be offered as condominiums as soon as we get our offering plan accepted.

Machelor: You say they are 500' or so from this place?

Massaro: Where we want to stake the sign as you know is on the top of Northridge hill and 104. If you go down that hill it has to be about 500-600' from where the approved development ends, lots R-15.

Conti: It' still 2 separate properties. Financial reasons obviously your corporations have done it this way to keep this separate.

Massaro: The alternative is to stake signs on our property, we are kind of land locked there. Right now we have one on the corner of Legacy and Northridge. I think you are allowed 2 signs per development on 2 access points or something like that. Our only other opportunity would be West Eddy and Northridge. West Eddy leads from the village in to what is Lewistown Park. If you're not coming or going from Lewistown Park, you have no business riding on West Eddy Drive.

Machelor: If you were to put that on the corner you could probably see it from.....it's all flat and open. Does anyone else wish to speak on this? Please state your name and address.

David Whitt, 702 Ridge Road, just across from the sign. I actually have 2 different complaints. The first one, I actually worked for the Town in the 70's. I can't believe that they are asking for

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a variance and you don't have a map here to show where the property is and you don't have a picture of the sign. I can't believe you even scheduled a hearing without that.

Machelor: We do Mr. Whitt.

Whitt: Number 2, I bought that house there in 1992. When I first moved there the only thing that was down below were the apartments. Then they started a couple years after I started living there they started the condos behind the apartments. The traffic just started to get terrible. There is no turn lane there. Actually in the late 90's there was a lot of close accidents. There is nothing there. I don't check my mailbox now without making sure anybody is coming. While I'm cutting my lawn I can feel the air from cars driving on the shoulder. It is not an exaggeration. I actually wrote a letter to the Town Board in the late 90's and either asked for a stop light or a turning lane. They agreed and actually sent it on to the State. As you know it's a State Highway. The State came back and said in so many words nobody has been killed here. That's 20 years ago. I've been there 27 years. The more they build down there the worse the traffic is. On top of that I'm guessing because I don't have to ask you that, this is for something that is actually accessed off Creek Road not Ridge Road? Number 2, I just don't think the Planning Board, Zoning Board should be encouraging more traffic down there until they either get a stop light or fix the road so there's a turn lane. I realize it's a State Road and you would have to ask the State for that. If these guys are willing to pay for a light there or road widening I would be happy with what they want. Every time more people get down there it gets worse and worse. I would be veryif you could get one of those two things. Sooner or later it's just going to get worse and worse. There is more traffic down there all the time. The Planning Board should be worried about the traffic flow.

Conti: We are the Zoning Board. They are two different animals.

Whitt: The Zoning Board should worry about it.

Conti: The only thing in front of us today is a sign on the corner there.

Whitt: It's going to create a hazardous nuisance. This just keeps going on and on. Somebody has to say wait, there is an obvious problem here. If you want to come and cut my grass sometime this summer?

Machelor: Thank you for what you have to say. I'm not going to deny your right but I'm just going to say it is sort of irrelevant to this issue. Even if it was a calm corner and there were hardly any traffic.

Whitt: You're creating an excess danger.

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Machelor: It's the people that live there and drive back and forth that are creating the danger. The sign is passive.

Whitt: He's encouraging more traffic all the time. You don't need any more.

Machelor: They do have permission to build.

Whitt: They have permission to build, maybe you should think of that too. Somebody should look at the traffic flow.

Conti: That is a whole different Board. That is something that you should have brought up; maybe you did to the Planning Board. We are the Zoning Board of Appeals. The only thing in front of us tonight is the sign. I feel sorry for you as far as the situation goes but that's not, that's way beyond our jurisdiction. That is the only thing we are here to vote for on this particular matter is that sign.

Whitt: I.....it's a financial hardship for them but they ignore everybody else's hardship.

Conti: We're not saying that. We have even voted on it. You're already saying what we are going to say. We haven't even gotten to that point yet.

Machelor: Thank you. Does anyone else wish to address this issue?

Carl Lollis, 706 Ridge Road: I live right next door to Mr. Whitt. We've already got signs across there. We've got so many signs there nobody can read them. They go by too fast. We don't need any more signs. The other thing this property they are going to build, they haven't even broke ground on it yet. I don't even know if they have permission to build. I don't want that sign in front of my house. It is ugly. He has one on Creek Road right now. It's a cheap piece of junk. You would think they could make the Town of Lewiston look good but no, its money, money, money and I'm sick and tired of it.

Machelor: Thank you. Is there anyone else that would like to speak to this issue? Does the Board have any more questions for Mr. Massaro?

Maggard: Yes. Could you tell me if there is an undesirable change in the neighborhood if you put that 4'x8' sign up there in that location? I realize it's a very heavily traveled road. But it is still a neighborhood area in that place.

Massaro: It's more a neighborhood area when you go down to North Ridgeview in to our apartment complex.

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Maggard: These gentlemen also have homes right where you're planning on putting a large 4'x8' sign.

Massaro: Understood. I just don't think that's going to spur any unforeseen unnecessary added traffic just by placing a sign at the corner of that intersection. What may increase traffic slightly is the fact that we're developing 15 duplexes or 30 homes at the foot of Northridge Drive. That has already been approved. That is going to happen. I think the placement of the sign is pretty much, it's not an afterthought but it's a formality at this point. I don't think it's going to necessarily increase traffic on an already heavily trafficked state road.

Maggard: No, that's not what I was getting at. I was getting at the undesirable change in the character of the neighborhood from a large sign like that.

Massaro: There is a similar sign that advertises the apartments at Ridgeview. I think it's esthetically nice looking. It's lit, there is landscaping around it. We would probably do the exact same thing with this sign. It wouldn't be identical to the one that I believe you were describing at the corner of Creek and Legacy Drive that is advertising our new 16 unit apartment building. That's a temporary sign. That's right on an active construction site. We don't have anything paved. This would, the temporary sign we would take it down once the development is completed. We would construct it in a more permanent manner. We would probably landscape it. Right now the plan is to have it be constructed out of wood. It would be slightly different from what you see on Creek and Legacy Drive.

Maggard: Thank you.

Machelor: I would entertain a motion.

Public hearing closed.

Whitt: How can you say in one sentence it won't make any difference and then I need it for traffic? You just said that. You said a little sign won't make a difference then why do we need it? I'm just quoting what he said. I don't mind the esthetics that much. I just wish they were willing to do something either a traffic light or widen the road there to make it safer for everybody.

Conti: Even if they wanted to do it they couldn't do it without the State. That would be a huge undertaking.

Brian Seaman: I apologize for being late. I had it down on my calendar as starting at 7:00. I didn't hear the applicant's presentation. I just wanted to review quickly with the Board, it's a use variance. I don't know if you went over that about the criteria, for a use variance you have to meet every single criteria. You can't do a balancing test.

ZB 2019-1H

Machelor: Yes. We tried to point that out those things one after the other.

Public hearing closed.

Heuck: If you take a look at it, separate parcel even though it's owned by two different corporations that are actually one in a sense. It still comes down to Section 360-173, prohibited signs. What it really comes down to that becomes the advertising mechanism that he wants to erect would then become a billboard sign which is prohibited underneath Town Code.

Machelor: It's prohibited under off premise too.

Heuck: In regards to all the criteria he hasn't shown financially through an appraiser so that takes care of one of the items.

Conti: The alleged hardship #4, the alleged hardship has not been self-created which it was. There is 2 of the 4 that they fail to meet.

A motion to deny the use variance request for a 4'x8' sign for LMK Realty on the basis that nothing has been presented that detects anything we should be looking at, plus Section 360-173 prohibited signs according to our zoning was made by Maggard,

Conti: They failed to address all 4 criteria for a use variance, whereas the Zoning Board of Appeals based on prior discussions had tonight we find the benefit to the applicant is outweighed by the detriment by the health and safety and welfare to the community therefore the motion made to deny the variance as presented.

Heuck: You can't add on to a motion, you have to vote on the first original motion and then maybe possibly amend that motion.

Seaman: You could do where Mrs. Maggard then says yes I include what Mr. Conti said in my motion.

Maggard: Yes, I agree.

Seconded by Conti and carried.

Heuck Aye, Conti Aye, Machelor Aye, DeCastro Aye, Maggard Aye

The next item on the agenda was a request from Tom & Becky Adams, 4539 Lower River Road, SBL# 87.10-2-4 for a variance from Section 360-38B, from the required 15' side yard setback to 9'9" to allow for a generator. The property is presently zoned R-1, one family residential.

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Becky Adams, 4539 Lower River Road. My husband and I are requesting an area variance so that we can place a generator on the north side of our house. It would, I guess the yard setback would reduce it for the width of the generator which 48' long. It would reduce it to 9'9". In retrospect we wish that we had.....our house is a new build. We wish that we had it at the time we built the house. We had a hard number budget that we were hitting. We were building a house andWe would like to place it, we work on the second story of our home and we would like to have a generator so that when the power goes down which it will inevitably do we won't be out of business.

Machelor: You would have had to get a variance anyway if you put it there when you built, it would be the same problem or move the house away.

Adams: So it's not the same situation as the air conditioning?

Conti: One of the difference I think on a generator is the fact that when it cycles either weekly or monthly depending on the schedule you're on, the loudness of the units and neighbors that it may affect. Whereas an air conditioner is a light fan usually. It's not that big of a deal. I think pretty much where our Building Inspector looks at these things as far as that goes. It allows the neighbors an opportunity to say I work midnights and that thing is going to come on at 9 in the morning and it's going to wake me up and I won't be able to sleep for an example.

Machelor: You have your photos in here. Where is the house next door to you?

Adams: It's 15' off the lot line.

Machelor: Theirs is 15' and yours is 15' and you want to encroach on it by 4'?

Adams: Theirs is on the south side of their house. All their mechanicals face each other.

Machelor: That helps.

Adams: The reason that we want it on the side is from their point of view looking towards our house, it's just coming out a little bit, and it makes no impact for them. If we place it in the backyard.....when they look in to their backyard they would see it as opposed to blending in with the mechanicals.

Conti: You have your gas and everything else on your side right there too. All your shut offs are right there for you.

Adams: Yes.

Conti: It's a natural gas generator.

Machelor: One of the things we look at is if there is another way of doing what you're doing? That is where your infrastructure is right now.

Heuck: Where the air conditioning unit is at towards the back of the house how much room do you have there?

Mr. Adams: We have to be 6' from the window from the Code perspective.

Machelor: A glass block window?

Adams: No, if we put it there it would have to be out a lot further in to the yard, 60" from the window.

Machelor: 60" from the window on the angle and how many from the wall?

Adams: From what we were told as long as it's 60" from the window, as long as the basement window is glass block.

Conti: You are going to replace it with a glass block?

Adams: Yes.

Heuck: That's not an emergency exit window?

Adams: No.

Machelor: Even if you were to move it slightly closer to the house, we would still have the same issue with noise.

Conti: This is the best spot you have for this? It's really the only spot you can put this at this particular point correct?

Adams: Yes.

Machelor: Any further questions?

Heuck: The variance you're requesting is 5'3" is that correct?

Adams: Yes. The width of the generator is what we need.

DeCastro: Did you talk to your neighbors to the north about this? They do not mind?

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Adams: Yes, they do not mind.

DeCastro: They could have showed up obviously. Do you have power outages often?

Adams: We hope not. We just moved there from out of State. Because we work in our home....

Machelor: Is there anyone that would like to speak to this in the audience?

Maggard: Do you have anything to tell you how much noise is going to be generated by this?

Adams: Decimal levels?

Maggard: Yes.

Adams: We don't. Its cycled weekly from what I understand and it runs for 5 minutes.

Maggard: That's not a problem as far as the neighbors go?

Adams: We spoke to them about it.

Maggard: Do they have the same type of operation too?

Adams: Their equipment is on the south side of their home.

Mr. Adams: Al Ruta actually said when he had a problem he could plug in to ours.

DeCastro: Are you going to be lying concrete down and have it set?

Adams: Yes.

Maggard: I don't see anything to say this request is substantial. It's a very good request I think even though we have to go with a little bit less yardage as far as the yard is concerned. I don't think it's that much.

Public hearing closed.

Whereas the Zoning Board of Appeals finds that pursuant to the prior discussions that benefits to the applicant outweighs the detriment to health, safety and welfare of the community a motion to approve the variance request was made by Conti, seconded DeCastro and carried.

Heuck Aye, Conti Aye, Machelor Aye, DeCastro Aye, Maggard Aye

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The next meeting will be February 14, 2019, at 6:30 P.M.

A motion to adjourn was made by Heuck, seconded by Conti and carried.

Respectfully submitted,



Sandra L. VanUden
Zoning Board Secretary



Norman Machelor
Zoning Board Chairman

NOTICE OF PUBLIC HEARING

Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals of the Town of Lewiston on January 10, 2019, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

LMK Realty Associates, LLC., request a use variance from Section 360-173 (2) Prohibited signs, to allow for a 4'x8' sign on vacant property located at Ridge Road, SBL# 101.12-1-1.4. The property is presently zoned R-1, one family residential.

Tom & Becky Adams, 4539 Lower River Road, SBL# 87.10-2-4, request a variance from Section 360-38 B, from the required 15' side yard setback to 9'9" to allow for a generator. The property is presently zoned R-1, one family residential.

Information concerning these requests are on file and available for inspection during normal business hours at the above named office. All citizens and persons of interest will be given an opportunity to be heard.

Norman Machelor
Zoning Chairman

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01/4/2019