

ZONING BOARD OF APPEALS

Town Hall 1375 Ridge Road Lewiston New York
Thursday – March 11, 2021
ZB 2021-3A

Present: Conti, DeCastro, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

Conti: Our lawyer has been in contact with somebody that has Covid, so he is on the phone. He can't be here because he's in quarantine.

A motion to approve the minutes of February 2021, was made by Conti, seconded by Heuck and carried.

Machelor: I would like to explain the Zoning Board purposes and procedures for those people who have not attended a Zoning Board of Appeals meeting. The task of the Board is to grant or deny a request to vary the Town of Lewiston Code, hence a 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 a denial to prohibit a project as presented.

Public Hearing Open

The first item on the agenda was a request from Kevin Jackson, 944 Pletcher Road, SBL# 74.00-1-31, for a variance from Section 360-62 B, yards required, from the 15' required side yard setback to 1.4'. The property is presently zoned R-2, two family residential.

Machelor: Please come to the microphone and state your name and address for the record.

Kevin Jackson, 944 Pletcher Road: Back in August I came up here, I was going to get a building permit but the gates were closed because of Covid. I went right ahead and started building the project anyways. I didn't want to waste time. The project is about done. It's 1.4' from the property line. I would like a variance from 15' to 1.4'. In the meantime, after I got the violation I went and got a survey from Terrapoint Survey Company. If you would like to see it I have it. It's about 130' from the road.

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Conti: You built it without a permit #1. That is something the Building Dept. has to deal with. We're not dealing with that here. We're dealing with the fact that it's 1.4' from the lot line which is an extremely substantial variance that you're looking for.

Jackson: I own the lot next door also. I don't know what the big issue is Mr. Conti. I own the lot right next door and this lot. The other side of the lot like in the past when I built the garage, I forget who was on the Board then, he said as long as there is a lot of land to go around, I have 16' on the other side to go around behind the building in case you need a fire truck back there or something of that nature.

Conti: We have to look at the piece of property you're talking about. We're not looking at the neighbor. You're 1.4' away. Even if you came prior to building it and we would have approved it which would have been a long shot, it all had to be fire walled.

Jackson: What do you mean fire wall?

Conti: The whole side of that building would have to have a fire wall installed.

Jackson: I can do that, that's not a problem.

Conti: What I'm saying is your best-case scenario right now would be to go through with a lawyer and purchase from yourself 15' of that property. You have two separate parcels. You would have to take 15' from this parcel and transfer it over to the parcel you are on right now, which would give you that 15' and would still give you 87' of frontage of that property so if you ever wanted to sell it you would still be within....

Jackson: I hear what you're saying. Maybe this has nothing to do with it but on that same piece of property, there is still 16' on the other side of the building.

Conti: We are talking about this side. We're not talking about that side; we're talking about this side. Each side has to have a minimum of 15' that is required by Town Code.

Machelor: If he were to do that would the lot that he took the 15' from be still a buildable lot?

Conti: 87' wide yes. You could combine the parcels and have one big lot.

VanUden: No, he has a house on the other property.

Jackson: I do have a house there.

Conti: How far from the lot line is that house?

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Jackson: It can be done. It's already done. I've gone both scenarios. I already had it surveyed twice. I had it surveyed to do exactly what you said. That's been done. If I go that route, see I really didn't want to because I was hoping to put an addition on that house. I guess I will go front to back if I have to. I wanted to go side to side. I had over 30' from this property line to the edge of the house. That will give me 17.99' if I do it this way to a new lot line and then it will be 16.7' from the new lot line to the house. You can't do the variance?

DeCastro: The reason I think the variance would probably be denied is because it would be a substantial variance, over 50%.

Conti: It's a 90% variance.

DeCastro: You could probably get away with 8' but not 1' from the line. I think other means would have to be taken in order for this to work out.

Jackson: What is my next step?

Conti: We have to hear anyone else that might want to speak. We have to close the meeting and take a vote.

Jackson: I've already had it surveyed both ways. I would rather have it this way but if that's not the way it is, that's the way it is.

Machelor: The only issue is when you come to us is what we are deciding about is the 1.4'. If you have an alternative that you would like to propose, for instance there has been 2 proposed, 1 is that you add 15' to the side and the other is to combine both lots together....

Conti: He can't do that; he has a house on that lot.

Jackson: What do we do now? Do you want me to bring in another survey....

Conti: We're going to vote on what we have in front of us. If that gets denied then you will have to talk with Tim or whoever and get your lawyer and take 15' from that piece of property and move it to this piece of property.

Machelor: There would be no more variance request if you did that. Then you wouldn't have to come back.

Conti: You don't need a variance. Once you do that and transfer that 15' you do not need another variance for this because you will be within Town Code.

Jackson: I'm ready to go then.

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Machelor: Mr. Jackson, just have a seat. Does anyone else want to speak to this issue? This is a public meeting.

Public hearing closed

Machelor: Does the Board have any further questions of Mr. Jackson?

A motion whereas the Zoning Board of Appeals based on the prior discussion tonight find that the benefit to the applicant is outweighed by the detriment to health, safety and welfare of the community, therefore the motion has been denied, seconded DeCastro.

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

The next item on the agenda was a request from Diana Raybon 1555 Swann Road, SBL# 89.01-1-14, for a variance from Section 260-53 E(2), required yards, from the required 15' side and setback to 10' to allow for a deck. The property is presently zoned RR, rural residential.

Public hearing opened

Machelor: Is there someone here to speak to this request?

Lissa Raybon, 1555 Swann Road. I want to build a deck on the side of the building that I put up. It's 20.8' to the property line and I would like to build a 10' deck. Mainly because the property on that side is very wet a lot of the time. I thought a deck would make it a lot easier.

Conti: You're looking to go 10.8' to the property line versus 15'?

Raybon: Yes.

Conti: You mentioned in here that your neighbor was going to sell you.....

Raybon: They talked about us doing that but that wouldn't happen in time for me....I need to get this Certificate closed out. We decided that a variance would be the quickest way to do it. I'm not sure how wide the property is but it's not wide enough to build a home on it. It was only ever going to be a road to the back property. It's 26 acres of land locked behind us. It's filled with dead ash. The whole thing.

Machelor: Any other questions from the Board? Any other questions from the audience?

Maggard: The one side of you where you want to put the deck, you have no people at all?

Raybon: No, it's 66' of just woods. The new owners are only going to build a road way for their car so they can go back in there. They just closed on the property a month ago.

Machelor: Would anyone like to speak to this?

Public hearing closed.

A motion based on the Board's discussion and the following considerations the Lewiston Zoning Board of Appeals determines that the benefit of the variance to the applicant outweighs any detriment to the health, safety and welfare of the community, therefore the variance request should be granted was made by Heuck, seconded by Conti and carried. Conti Aye, Machelor Aye, Maggard Aye, DeCastro Aye, Heuck Aye

The next item on the agenda was a request from the Estate of Joseph Deck, Sullivan Court, SBL# 102.13-1-80, 102.13-1-81, for a variance from Section 360-36D, required lot area where sewers are provided, from the required 75' frontage and the approved 66' access that was part of the subdivision plan to allow 24' of frontage accessed through the Oak Hill Subdivision to allow construction of a new home. The property is presently zoned R-1, one family residential.

Public hearing opened

Michael Dowd, I'm an attorney in Lewiston, 920 Center Street. I'm here to represent the Estate of Joseph Deck and Michael Deck.

Machelor: I know this is complicated.

Dowd: Several years ago, when Oak Hill was developed there was a lot that was adjacent to Oak Hill that had about a 24' access way. It was a single lot and across that lot ran a sewer and water line easement which we went back to have a sewer and water line installed there. That sewer and water line as I understand it runs under Oak Hill and crosses under the small access way to get to that property and continues on east for quite a while above Sullivan Court. At some point Mr. Deck before he passed away determined to try and develop two lots there. He subdivided his lot; it was filed in the County Clerk's office. It's an approved lot. The access points would have been at that point 2, 33' wide like a pencil shaped lot leading up to the top of the ridge. Those 2 33' wide access points are on quite a steep grade and probably difficult to access. Also, I would point out that in order to take those 2 lots to develop them and use those access points a concern that was raised by the Town was what's the impact going to be on the water and sewer line? I submit to the Board that to allow for 2 access points going up on to Sullivan Court you would in fact cover more of the easement by any driveway that might be needed then if you were to come off Oak Hill, the original lot. We're proposing to combine the 2 lots in to a single lot for 1 home so it's a reduced density. It's going to be less of an impact on the neighboring community. We want to make sure that whatever variance we get because we are asking for a variance on frontage and the Board should understand too that the frontage is 75'. We're talking about the driveways. As it stands right now both of them are already approved at 33'. The 24' access from years ago had been approved and was filed in the Clerk's

office. We're seeking that variance. It does lead back to a very large lot. The seller would of course provide and I think this is of interest to the Town, right now there is an easement there. Just because there is an easement does not mean we're not entitled to use it we still own the property, or my client's do but there is obviously a concern about what would happen if there were a major destruction to the sewer line or water line so we would provide written assurance to the Town by amending that easement to indicate that if they're required because of a break in the main or a break in the sewer if the driveway would have to be removed that it would be at the expense of the owner of the property to replace that portion of the driveway. We would also commit to make sure that the design and I've provided some maps, the design of the driveway we would of course try to make the least impact to get off of the easement as quickly as we can. Again, I would suggest if it stayed the way it was, we would impact more of it than what we are asking for now. We are asking for that 24' wide access variance instead of 75' of frontage. I'm available to answer any questions.

DeCastro: For that access off of Sullivan Court for the steep grade, did you have an estimate as to what it would cost if you had to get those driveways carved out?

Dowd: No, we did not. Again, for practical purposes when the lots were developed that would be up to the buyer of the lot to go out and hire an engineer etc. Mr. Deck never intended to build spec houses so there is no indication of what that cost would be. I would suggest it would be pretty steep because I think you would have to do a back and forth to get up there. It would be more difficult for emergency vehicles to access anyhow. I think it does sort of mitigate the impact you might have coming off Oak Hill. The other point I want to make is Mr. Deck is still involved with the Oak Hill Association because that is a private road and we would get approval of course from the Oak Hill Association for the access going on to that lot.

Conti: That 24' easement right now is a gravel road right now correct?

Dowd: There is a gravel road that exists there yes.

Conti: So, fire or ambulance can take that road to get back there in case of an emergency?

Dowd: Of course, they could. Ultimately when the final driveway is put in there my guess is, they will probably utilize that base and it will just make that road stronger. I also understand of course in addition to ambulances because of location of property it would be sprinklered anyhow. We will have all those safety features in place at that property.

Conti: I'm saying if the variance gets denied tonight and you have to build the driveway on Sullivan Court, that easement is still gravel correct? The Fire Dept. and emergency services will still have access to go back there?

Dowd: If they wanted to yes. That is an easement for the Town.

ZB 2021-3G

Conti: You were saying if you went with the driveways on Sullivan Court, fire trucks and emergency vehicles would not have access to the houses but you still would have access.

Dowd: To use the gravel driveway? I suppose so. We certainly want to make sure that whoever owns the house up there is safe. I will say from the perspective of the easement itself, is limited to the water and sewer lines, but it's not the Deck's intentions what so ever to restrict access to the Town in any way. Of course, depending on this Board's action we would then record a deed turning it in to a single parcel.

Machelor: Can you come forward. (map) This is what's currently approved correct? These are the 2 access points?

Dowd: 33' wide each. This green is the actual easement area. The point I was making earlier is if you come off of Oak Hill Drive and we were to come up here and cut across quickly because the easement ends here but we own this property, we would impact that much of the easement.

Conti: Which is how many feet do you know?

Dowd: I would say it's something less than 120'. From Sullivan Court if we had 2 driveways, understand the configuration of this lot is 1 driveway would come up and cross the easement, another driveway would have to cross the easement and have to go further than 120'. Here is less of an impact on the easement than to go over the 2 lots on Sullivan Court.

Maggard: It's right over the water and sewer line.

Dowd: No matter how you develop it, it's going to go over the water and sewer line because the water and sewer line runs the entire distance. Off of Sullivan Court you're over the sewer line here and you're over the sewer line here. Coming off Oak Hill you're only impacting the easement here so there will be less disturbance to the easement off of Oak Hill than there would be using Sullivan Court.

Machelor: You're not crossing perpendicular so you're basically running parallel to both lines here and parallel to both lines there.

Dowd: We want to cross as little as possible. We don't want to go over it. We want to stay to the south of it here assuming we can locate the lines. I think they are not under the gravel drive. We have room here where it crosses so we're only talking about a perpendicular cut across it as opposed to trailing over it. If we're down here off of Sullivan Court we're going to have to come up and travel over it the entire way. I think it's less of an impact on the easements.

ZB 2021-3H

Machelor: Let me show you the second one. This is the new plan. You would continue to own this.

Dowd: Yes, they may.....

Machelor: Somebody has to own it. The way it's portrayed here which I know is just dashed lines, that's the whole thing and your water lines are right here. Are these dangerous as well?

Dowd: These are not in the easement here. We're only crossing here. We are trying to limit the

Machelor: How deep is the easement?

Dowd: It's 62' wide it looks like. There is no way to access the property without crossing it one way or the other. We're trying to minimize the impact by doing this.

Conti: You're saying there will be 2 driveways, are you saying if this doesn't get approved tonight that's it's going back to 2 lots and you will have 2 houses?

Dowd: If it doesn't get approved tonight, yes essentially because we're trying, again, they have a buyer that wants to buy the entire lot and we again do believe it's less of an impact, certainly on water and sewer and connections and everything else up there. But if it's not approved and we don't get the access off of Oak Hill, again if we do sell those lots, I think the impact to the easement is worse.

Conti: My question is because you're talking 2 driveways off of Sullivan Court. That would only be 2 driveways if you had 2 separate parcels.

Dowd: Right. If it was 1 parcel, we would have 1 driveway off Oak Hill.

Machelor: What about 1 driveway off Sullivan Court?

Conti: That is what I'm saying.

DeCastro: That would be hard when it comes to selling the lots, nobody wants to share a driveway.

Conti: We are talking about that person buying the double lot and he would have 66' and you can build a driveway that way. Those 2 would be combined.

ZB 2021-31

Seaman: I think what Mr. Dowd is explaining to you though is that the potential buyer at this point in time wants both lots. If this doesn't get approved then it doesn't get approved and the current owner simply owns 2 lots just like they do now.

Conti: He's not saying they wouldn't take it.

Seaman: He doesn't know that I imagine.

Conti: Right, we can't make that determination.

Seaman: Then you should.....if this is not approved then you are left with what's currently existing which is 2 lots.

Conti: We're not approving the lots being combined.

Seaman: It's a recommendation that I've included in my report that you condition this on combining of the 2 lots.

Machelor: If the 2 lots were connected, you'd just have 1 driveway right off Sullivan Court. You would cross the easement once.

Dowd: That could be a suggestion but I'm going to suggest to this Board that I don't have the authority to do that of course. We have a buyer that wants to buy the single lot and it makes it very cost prohibitive and I'm certainly not trying to argue the point but at the end of the day the homeowner's ability to access the property over the easement really can't be refused to them. I'm not trying to be argumentative; I'm saying the Deck's family still own that land. There is nothing really prohibiting them from using the easement. What we're suggesting is that in addition to us doing that if we get this approval and make it clear that we can access up Oak Hill, we're going to go the extra step and say not only will we limit the impact by the driveway, we're going to put it in writing if there is a problem down the road and the driveway has to be removed, that is at the expense of the property owner. For example, if somebody, we will think of a road on Ridge Road where there is sewer and there was a problem and the Town put a new water line and new sewer line and they removed the pavement from that homeowner's property without that written assurance the Town would have to pay to replace it. We're offering to say we will make sure that the buyers are aware that they will have to replace the driveway at their expense if there is a problem. I don't know if there is much more we can do because right now we have no obligation to that. We are offering to do that to make sure the Town is satisfied with our proposal.

Maggard: What if there is a problem with the water and sewer lines, would you have the owner replace that too?

Seaman: No, they can't do that.

Dowd: The water and sewer lines are owned by the Town.

Seaman: They wouldn't be allowed to do that Marge. We wouldn't allow them to do that.

Machelor: I hate to restate the obvious but let me step it back again, the preferred plan here is to cross the easement down near the gravel road enters Oak Hill? Is that going to service both of those lots?

Conti: It's going to be 1 lot.

Machelor: If it's 1 lot why is it not a good idea to take the access to that 1 lot to Sullivan Court?

Dowd: There is 2 reasons for that, #1, for practical purpose from a property owner the extent associated with putting a driveway in up a driveway with a very steep grade when there is already more or less the bed of a road available, there's the practical expense. The other point is the impact to the easement whether it's off of Sullivan or off of Oak Hill, I would suggest it's even less of an impact on the easement. We're trying to benefit the Town by doing that because we can't say today and again, if the homeowner bought the house and they accessed it off of Sullivan Court, they decided to build on the west side of that property to put it off in a corner. We don't know how much land they are going to cross over that easement. I can't say and I'm not arguing the point but as a legal matter the way the easement is drawn right now there is nothing restricting us from doing that. We were really trying to be more cooperative and give you more than you have now with less of an impact. We only have the one house. Frankly to me it makes better sense, why Mr. Deck split that off to begin with, remember before he split it off, access to that property would have been Oak Hill Drive. That was already in place all those years ago. I don't think he thought out the expense and the complications of taking 2 driveways up Sullivan Court.

Machelor: I have to say no one, did someone from the Town realize that by approving those 2 33' driveways, you knew they were going to have to cross that easement. Whether it was done then or whether it's done now.

Conti: Can we hear from Dan who is....

DeCastro: Can I ask for some clarification? Those 2 driveways on Sullivan were to be built on, you already have approval for a 66' wide driveway potentially that crosses the easement either way or we have this little snaking one which would be 25' which would be less....

Conti: It wouldn't be 25'.

ZB 2021-3K

DeCastro: What would be the amount.....I thought it was 25'?

Dowd: What I'm suggesting is that...

Zahno: This is 140'.

Dowd: To the south of the easement there is enough room for us, that's why we have a snaking feature to go up there. Looking at the maps you can see where the clean outs are at and the taps. I believe if you keep close to the north edge as you enter where that 24' is now, there is nothing under it. The improvements are more in the middle of the lot so we want to hang on each edge and so we're only crossing maybe 25' of it. As minimal as we can.

DeCastro: The entrance would be 25'.

Dowd: The entrance right now is 24' that is all we have right now. That was originally approved.

Machelor: We have to approve a variance for that 24'.

DeCastro: The 66' that is already approved though would be wider, either way it crosses the easement. I think either way you are going to cross it and there wouldn't be any agreement whereas the new purchaser or current owner would have to pay out of pocket if that were to be dug up. I think it might be cost effective to the new plan and it would save the Town the hassle of having to replace black top or whatever it would be down the road. That is my opinion.

Conti: Can we hear from Dan, our Water Foreman.

Dan Zahno, I'm the Town of Lewiston Water Foreman. I find it hard to believe that they're only going to be that short of a distance down that driveway. It's too close in there between the water and the sewer. For them to put a driveway in there which they're thinking is going to make it a better idea, what about when I have to dig that up Christmas morning? Now you're really putting a strain on the Town to do that. We have these easements for a reason, it's not to go over the top of them. I know in some of the other subdivisions we don't allow little fences and sheds on top of 6" drain lines. You're talking about a 16" water line. If they come in off of Sullivan Court which is definitely possible for them to do because other houses up there have done it. I find it hard to believe you're going to put a 66' wide driveway in to go all the way up that. That doesn't make any sense to do that.

Machelor: It's 66' available.

ZB 2021-3L

Zahno: Nobody is going to do that. They are only going to make an 8-10' driveway to cross that. Nobody knows what they're going to do I realize that. But for them to come all the way down through Oak Hill, that doesn't make any sense to me to do that, especially with a water and sewer line in it. That's a big water line, that's a big fee. If that ever let go, you'll know it fast. That would be a catastrophe. That should not be. It's 100 and some feet of driveway that we're going to have to tear up.

Dowd: As it stands right now the way this is designed and configured, we would definitely cause a greater impact coming up Sullivan Court, crossing over that property because we would have to run parallel over it based on the current approved plan for a minimum distance that's going to be further than what we are suggesting.

Machelor: Why don't you come up and show me because I don't understand that. Why wouldn't you go right here?

Dowd: Looking at the original map, if we were to develop this way, we would have to come up here, maybe we could go straight across with it and we're not putting in a 66' wide driveway. We want to put in a 12' driveway, that's all we want.

Zahno: You're talking 12' here and 25' over here so that's already a shorter distance.

Dowd: So, we come up Sullivan Court and we have to cross here to get to this parcel. If we had the second lot, we would have to come up here. We would have to run all this way to get to this lot. Coming up here and running that distance plus crossing here, I suggest is a greater impact then coming up here because now we are outside, the most we would be on the easement would be this distance right here versus....

Machelor: I concede that this is better than this. Your plan is to combine these 2 lots together and take 1 straight across. If you think the grade is too steep, it could wind around there and give you access.....

Dowd: I'm trying to understand honestly if we are going to indicate to the Board and to the Town that it's the homeowner's responsibility in the event there needs to be repairs which the Town does not have right now and if we did these 2 lots, if we don't find a buyer, if the buyer doesn't want to come up Sullivan Court, we have this impact, it's absolutely common sense to say let's get the property owner to agree that....we don't have to do it right now, right now if you go up there and you replace that line, you're replacing the driveway.

Zahno: It's gravel, it's peanuts.

Dowd: If someone were to build up there without an agreement from us, the Town will have to pay for it, not us.

ZB 2021-3M

Machelor: Except you wouldn't be putting a concrete driveway here.

Dowd: Yes, we would. We're putting black top here who says we're putting concrete?

Machelor: Replacing black top is a lot cheaper than replacing concrete.

Dowd: I assume it may be but again the property owner at the time will decide what kind of a driveway he wants. I would assume you would want black top.

Machelor: Oak Hill is a private road?

Dowd: It is.

Machelor: What permission do you have to use that road?

Conti: Nothing yet. He said after today's meeting will determine if he goes to Oak Hill HOA.

Dowd: Something I would like to point out too this easement continues to run down this way, Oak Hill Drive. The water and sewer line are already on Oak Hill Drive by I don't know how many hundreds of feet. It's the reality of easements that will be covered by access roads. We're trying to minimize it and we're trying to give you the assurance that you won't have to pay to replace it. We want to combine this as a single lot, it's a lower impact. Maybe Mr. Deck will say look, I can't, unless I'm able to access it here and sell one lot, I'm going to end up selling both of these lots and the impact is greater.

Machelor: The next guy will have to do this part.

Dowd: Yes.

Conti: On here where are the water lines?

Looking at survey

Conti: If we follow this road, where would we cross, is the water line going to cross all of this section?

Dan: The water line is right along in here and the sewer is back in here.

Dowd: What we're proposing to do is come in along here and just cut straight across. It's lower impact. This whole section is out of easement. It is a lesser impact.

Dan: Are you sure that is out of the easement? That's pretty close.

ZB 2021-3N

Dowd: I'm positive. Here is the easement line, right here. This is the survey from Apex. The green lines are the easement. The property line for Mr. Deck is here. It comes off at an angle like that.

Conti: Let me ask you because you do the digging and stuff like this, if this was black top versus concrete would it make life easier?

Dan: Yes, black top is easier to pull up than concrete for sure.

Conti: If we got to that point, part of the variance could be and that's even if we got to that point to be black top not concrete.

Seaman: I would caution against requiring specific materials of a homeowner.

Conti: We're talking about covering water and sewer lines so I think at this point it would be something that we could look at.

Machelor: Tom, we would still want the ability to have it repaired by the homeowner regardless of what it was.

Conti: The repair would be by the Town. The home owners would replace the driveway.

Dowd: We wouldn't require the Town to replace the driveway. That I think is a pretty significant concession that the Town doesn't have that right now.

Seaman: I agree with that. Right now, what the applicant is suggesting is to give the Town significantly more ability to control where the driveway ultimately goes. If you guys look at my recommended conditions, there is 4 of them. One of them was exactly that, that the applicant constructs the driveway and any other improvement or structure within the easement to the greatest extent possible to avoid being constructed on top of the water and sewer lines and to work with the Town of Lewiston to achieve that goal. That is one of the conditions you can impose on them. That gives the Town the ability to work with the applicant as to where exactly where the driveway goes. The Town doesn't have that ability right now. The next one is that the applicant would re-file new easements with the County Clerk's Office. This isn't just an agreement that's signed. It's filed with the Clerk's Office and associated and connected with the property which would ensure that the Town of Lewiston will not be liable for any damages to private property or structures within the easement that occurs and results in needed repairs to the infrastructure in the easement. That's a much stronger easement than the Town has in almost any other location in the Town. To me from a legal perspective what the applicant has proposed to the Town is a significantly stronger legal advantage for the Town than what currently exists. As long as you infuse the conditions that I laid out.

ZB 2021-30

Conti: We haven't approved anything. We have a lot more time yet.

Machelor: The public hearing is still open. Mr. Dowd you can have a seat. Does anyone else want to address this issue? Please come up and state your name and address.

Dave Carpenter, 5121 Oak Hill Drive: I'm the only one you guys haven't talked about yet in terms of all these easements. A couple of clarifications, I came down here and looked at the blue prints. They are not Oak Hill lots. They are Sullivan Court lots. I heard the gentleman say they were Oak Hill. They are not part of the Oak Hill subdivision. A potential buyer? I haven't seen anything about anyone buying. I'm assessed for nearly half a million my house. We're talking about building a driveway right up to essentially the front of my house. I have pictures. Right along where my kids play. If I could just show a couple of photos here. What you don't know is where my house is on this lot. The first complaint is child safety. Here is my corner stick, here is the proposed driveway, here is where my kids play, it's 5'. My house is here. It's steep so you have cars where my kids play, they could slide down the hill. Coming up the hill I have lights coming in my house. Meanwhile I never would have bought this house if I knew someone was going to build a driveway across 2/3rds of my lot right up in to my front porch and in where I watch tv. This is 20' off my side house where I put the stakes. I mapped it all out.

DeCastro: Where is the gravel road that exists now?

Carpenter: (picture) I'm standing on the gravel road. Here is where....i'm standing right where it would snake up. This is only my first list, I have 3 other categories of complaints. Here's the lines, I put the stakes because it cuts right across my lot. Here is where the driveway would be. Why would I buy this house, I can't even sit on my front porch if the driveway goes there? Legally it can't go there because it's an easement.

Machelor: I won't discuss the legalities of it.

DeCastro: I think Mr. Dowd said that because of how broad the easement is they may actually be able to build anyway.

Dowd: We believe that. We are trying to be as cooperative as we can.

Carpenter: That is all going to be driveway. There is my stake right there. 2/3rds of the front of my lot, the driveway is going tothere's no setback. It goes driveway and my land.

Maggard: There has to be a setback.

Carpenter: It can't because this is all ditch. It's all a ditch easement. If any of you would come up Oak Hill you would see. This is steep. My kids sled down the front of the yard here. We're

not talking about a normal driveway. You are talking about one coming up towards your house and then along the property line.

Dowd: Did you measure the distance from the edge of your lot line to the front of your house? You are complying with the Town setback requirements I would assume.

Carpenter: We have HOA setbacks; my house is way back here and here's the road. We're talking about a driveway going across my property line. We're talking about combining a couple of lots. Maybe there is a potential buyer. These lots have been sold for over 20 years. Meanwhile I'm paying taxes all the time and my house is assessed pretty high. Who is going to compensate me for loss of property value?

Dowd: Driveways are a natural creature for the development of a house. This looks, I don't know how accurate it is but.....any other subdivision you live in you have driveways that are close to your neighbor's property line. It is not unusual to say that we need to have access to our property. I think we are probably 50-60' away from that driveway to the front of your house. That is my guess. That is a pretty wide distance if you were to compare it to what other neighborhoods require. It's a pretty fair distance.

Machelor: Thank you. You have the floor right now what are your other objections?

Carpenter: I went through child safety, that's pretty apparent. Obviously when I bought the house, I didn't have to worry about this because the frontage access is not 75'. I never had to worry about any cars ever going down that gravel, which is not even a driveway, it's just gravel. I've been in my house for over 5 years. It looks like a road because that was put in so people could get a look at the lots but it's never to be a road, it's never supposed to be a driveway because that's all easement. I touched on property value. Disturbances, so obviously I have cars coming right up and shining their lights in my house. I have cars going down. It's steep. Why would I sit on my front porch and I have neighbors coming in and out of the driveway? The last thing the HOA. They need approval from the HOA. The gentleman said at one point, the HOA will give it approval. That's pretty optimistic. Those are my complaints.

Machelor: Anybody have any questions?

DeCastro: Are you a member of the HOA?

Carpenter: You have to be yes.

DeCastro: What is your position, President, Vice President? I guess what I'm asking is would you directly have a vote on that?

Carpenter: Yes. I brought the HOA guide.

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Dowd: Can I quickly address the HOA, that lot was originally part of the HOA. As I understand from my client they have continued, even though it got transferred over to Sullivan Court, the subdivision itself, they continue to pay the HOA fee for that one lot off of Oak Hill Drive for all these years. To the extent that they've been paying the HOA fees and any future homeowner would have to pay those HOA fees because they would be enjoying the benefit of that private driveway. That would also be a contingency of it that they continue to pay. They have paid and they will continue to pay. The last point again on safety, we all love our kids but I think of so many other neighborhoods and other communities where kids are riding up and down sidewalks where there is driveway after driveway on their bicycles. It's just a way of life. Here, we are talking about one house, it's not traffic. We're making it sound like there is going to be traffic all day. It's a single-family home is all we are proposing. Thank you for your time.

Carpenter: If I could just rebut that. We are talking about one house, but this is the house that I bought that that's not one thing I had to consider when I bought the house. I didn't buy a house with a house sitting next to me and already had its driveway going up to the house I was going to buy. I would have never bought the house. Who would buy that house? It's different if you have a normal driveway and a neighbor next to you.

Machelor: We can't address that either. It's speculative about who would do what and why. Every time we make a decision on the Zoning Board it impacts somebody and a lot of people say gee why are you saying yes or no and sometimes, we are constrained by the actual law that says the property owner has the right to do xyz on his property even if his neighbors don't particularly care it. It's just one of those things.

Carpenter: I understand that and I would say there isn't a neighbor next door. It's just an empty lot that's been empty for 20 something years. If the other neighbor was in here saying I want to build a road it would be a different story, I think.

DeCastro: Is there any suggestion you could make as to a compromise if something like that were to be put in?

Carpenter: I think it should go through Sullivan Court. I think the compromise would be to sell me the lot or sell the HOA the lot. It hasn't been sold with a driveway going up through Sullivan Court then.....

Dowd: I don't want to be flippant, I'm sure Mr. Deck would be happy to sell the property to the HOA if they want to buy it. It's something I always say, I'm the Zoning and Planning Attorney in Porter and people want to control property, then of course we would entertain an offer.

Machelor: Thank you.

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Carpenter: The only way is if the Water Foreman over here would say sure just put the driveway across the whole entire easement and then go in to the one.

DeCastro: Are you saying instead of it snaking?

Carpenter: Instead of it snaking going right along the easement for 75'.

Dowd: If I might say I'm not sure where the sewer and water are located. If we could run that driveway as far north as possible and stay off of the water and sewer and make that turn further east, the way that stone driveway is right now, we would be more than happy to cooperate with the Town.

Machelor: If you were paying attention to our attorney remotely, he's got some conditions and those conditions include you and the Town working together to position this stuff and minimize the impact.

Dowd: If we are able to do that and it satisfies this gentleman.

Machelor: That would be one other consideration yes.

Carpenter: I don't think there would be any way to do that unless you go across the whole entire, unless you go straight across.

Conti: Dan, is there any possible way to stay all the way over and go up without impacting the water or sewer lines?

Dan: No there is no way because the sewer and water are so far apart. I don't believe there would be.

Machelor: Thank you. Does anybody else want to speak to this issue? This is still a public hearing.

Public hearing closed.

Machelor: Motions? As Tom said and I'll read it again: If the Board is inclined to approve the area variance, he recommends the following conditions be placed on the approval and required prior to the issuance of a building permit. I can read them all again in case anybody wants to hear them but they're not too complicated: Applicant to demonstrate 2 parcels are joined as one. Applicant to demonstrate the property owner have rights over the private road way to access the parcel. Applicant construct any driveway and any other improvement within the easement to the greatest extent possible to avoid being constructed on top of the water and

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sewer lines, work with the Town on that. Re-file new easements with the County Clerk. Any approval would have to be conditioned on these things.

Maggard: Does Tom have anything else to say?

Conti: Marge wants to know if you have anything else to say Tom?

Seaman: No, I don't have anything else to add.

Machelor: The issue before us is whether or not we are willing to grant a variance of 24' versus 75'?

DeCastro: Can I make a suggestion? Could we possibly table this to get an estimate of what it would cost to provide that access to Sullivan Court?

Conti: I would agree with that along with how much land over the top of the water and sewer lines is going to be covered by that driveway?

Heuck: A gravel road is a gravel road. The way you have it presented here, where does that cross exactly with the water and sewer lines so the impaction could be less.

Conti: How could we do the best we can do to bring up the concerns of Mr. Carpenter?

Machelor: The gravel road wouldn't exist anymore.

Heuck: We know that. What we're talking about is the existing gravel road right now doesn't go across any of those. Where do they go across and how much impact do they have on the water and sewer right now?

Conti: We're guessing on the impact. You're asking for us to make a decision on something that we can't say, does it go over 10', 50', 100'? What can we do to cover the concerns of Mr. Carpenter also?

DeCastro: It could also take away from potential buyers if we knew that it would cost \$25,000-\$50,000. to access Sullivan Court. I think all these issues here could off set some sort of compromise but I need to know a little bit more.

Dowd: I'll be certain to get estimates. I'm sure I can get those from Mr. Young or someone else local that everyone is familiar with. I will certainly work with the Town. I've asked in the past and we just haven't been able to get together to see if we could actually locate where the lines are? The easement is wider than where the lines are. If we're lucky, perhaps if there is enough and we only need 12' for a driveway, if we could hang to the north of the line, it would impact

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Mr. Carpenter the least and follow that as far as we and cut across perpendicularly but I don't disagree that it would be a good idea to try and locate them. I don't know if they physically go out and stake them.

Dan: I've never been asked this question. I've never even heard of this until you just said it. Nobody has asked me to do anything.

Dowd: I talked to Mr. Masters about meeting on occasions.

Dan: That's fine. I will be the one doing it. No matter where you put the driveway, I don't think anyone realizes if that water line is a drip how big of a hole you're going to dig. It's a 16" line. It wouldn't really matter where the driveway is going to be.....

Dowd: If that's the case then we would be happy to keep that driveway as far north as possible with the written agreement that says we're responsible to make any repair in the event it has to be taken up. That would alleviate all the problems if we could just say we will run it north and where ever the problem is if you're coming off Sullivan Court or where ever, the point is we will not ask the Town to be responsible for the repair of the driveway. We will keep it as far north as possible.

Conti: Let's get this down so we know what's going to happen now. Let's go over everything that we need him to cover.

A motion to table the matter until the next meeting to get an estimate of the cost for a driveway off of Sullivan Court, if we decide to go over Oak Hill Drive, how much of the driveway will actually go over the water and sewer lines. Talk to Mr. Carpenter and go over any concerns he has so we can minimize those concerns. HOA vote was made by DeCastro,

Carpenter: I think an HOA vote. If HOA votes and doesn't allow access then it's mute.

Conti: If the HOA comes back and says no....

Dowd: We have to address these issues and we are aware of it. That is why it's one of Mr. Seaman's conditions.

Seaman: If you're concerned about the HOA making that determination before the Board makes your own determination, what you should do is condition it on HOA approval or, we have no idea how long the HOA might possibly take to consider this. You can't table this until a different Board may or may not convene to make a determination on this. If that is a concern, make it a condition of your approval but don't table it for just HOA.

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Conti: We're not, we're tabling it for numerous things. That just happens to be one thing that was brought up at the end.

Machelor: I think we are tabling it for the absolute dimensions of where all these things are in a larger scale version of where everything is.

Conti: So, Tom can hear it, Damon's request to table it to get an estimate of the driveway over Sullivan Court, if we go off of Oak Hill Drive how much of the driveway will go over the water and sewer lines, to look over and talk to Mr. Carpenter and try to take care of his concerns, and an HOA vote, but we're not tabling it for that reason. Is there anything else we need to add?

Seaman: What I would recommend, your public hearing is open and then table it you're going to be taking new evidence at your next Board meeting. So re-open your public hearing and then table it for those reasons.

A motion to re-open the public hearing was made by DeCastro, seconded by Heuck and carried.

A motion to table the matter until the next meeting to get an estimate of the cost for a driveway off of Sullivan Court, if we decide to go over Oak Hill Drive, how much of the driveway will actually go over the water and sewer lines. Talk to Mr. Carpenter and go over any concerns he has so we can minimize those concerns. HOA vote was made by DeCastro, seconded by Conti and carried.

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

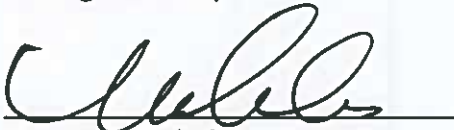
The next meeting will be April 8, 2021, at 6:30 PM

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

Respectfully submitted



Sandra L. VanUden
Zoning Secretary



Norman Machelor
Zoning 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 March 11, 2021, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Kevin Jackson, 944 Pletcher Road, SBL# 74.00-1-31, requests a variance from Section 360-62 B, yards required, from the 15' required side yard setback to 1.4'. The property is presently zoned R-2, Two Family Residential.

Diana Raybon, 1555 Swann Road, SBL# 89.01-1-14, requests a variance from Section 360-53, E(2), Required yards, from the required 15' side yard setback to 10', to allow for a deck. The property is presently zoned RR, rural residential.

The Estate of Joseph Deck, Sullivan Court, SBL# 102.13-1-80, 102-13-1-81, requests a variance from Section 360-36 D, required lot area where sewers are provided, from the required 75' frontage and the approved 66' access that was part of the subdivision plan to allow 24' of frontage accessed through the Oak Hill Subdivision to allow construction of a new home. 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
#N280575

3/04/2021