

ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – February 13, 2020
ZB 2020-2

Present: Conti, DeCastro, Machelor, Maggard, Muzzi

Absent: Heuck

Presiding: Norman Machelor, Chairman

Machelor: I would like to call the meeting to order. For those that can stand, please stand for the Pledge of Allegiance.

Pledge of Allegiance

A motion to approve the minutes of January 9, 2020, was made by Conti, seconded by Maggard and carried. 1 Abstention

Machelor: 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 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 of the Code to continue the project or a denial to prohibit a project as presented. On the agenda tonight we have two items. We have an administrative change here. We're going to handle Item B, a previously tabled code interpretation. We're going to handle that first.

Previously tabled Danielewicz, Ridge Road, SBL# 76.00-2-8.1, Code Interpretation

A motion was made by Machelor,

WHEREAS, this board makes the following procedural findings:

Applicant, Danielewicz, initially submitted an application requesting a Use Variance only.

Applicant then withdrew the application for a Use Variance only and submitted a new application seeking either a favorable Interpretation of permitted use, or in the alternative, an approval of a Use Variance.

The first public hearing was conducted on September 12, 2019. This hearing was held open on the request of the Applicant and consent of this Board.

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Applicant then withdrew the portion of the application requesting a Use Variance, without prejudice, and proceeded with the application for an Interpretation only.

The second public hearing was conducted on November 7, 2019.

For various reasons, Applicant and this Board mutually agreed to postpone the decision on this matter until February 13, 2020.

And, WHEREAS, this Board makes the following factual findings:

The activities conducted on the property consist of storage of tree cutting equipment, including trucks and booms and the storage of wood chippings. The tree cutting activities are conducted by a business which is not owned by the Applicant and the employees of that business perform the tree cutting services off site.

These activities conducted on the property are not agricultural activities because they do not involve the production of crops and/or livestock.

The activities conducted on the property are not activities or uses of Forestry or Conservation because the property itself is neither being used as a conservation area nor is it being used for the growth or production of trees or forest.

Now, THEREFORE, this Board makes the following interpretation:

The allowed uses in the RR district of "Agriculture" and "Forestry and Conservation" allows for agriculture, forestry and conservation activities located on premises, and does not extend to the siting of a tree trimming service or storage facility for a business which provides services to others at different locations.

The activities conducted at the Applicant's property are not Agricultural, Forestry or Conservation and are therefore not permitted to take place in the Town of Lewiston's RR district.

Motion seconded by Maggard and carried.

Muzzi Aye, Conti Aye, Machelor Aye, Maggard Aye

Machelor: We are holding up for a minute for our fifth member.

Mr. Wiley: 2 things if I may while we are waiting, first of all again thank you everyone for coming out. Obviously in Western New York you have no what the weather is going to evolve in. Tonight, is one of those nights I suppose. Secondly, I want to thank you for acknowledging not everyone is able to stand even though in spirit I'm with you because so often I think that that's overlooked that some of us are unable but still.....I really appreciate that you mentioned that.

Machelor: It's a good point and thank you.

Muzzi: Thank you Norm it was a good point.

DeCastro arrived.

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DeCastro: Did we approve the minutes already? I had an issue with them. It has me recusing myself and then voting on it.

VanUden: I'll fix it.

A motion to re-open the minutes was made by Machelor, seconded by DeCastro and carried.

DeCastro: page 20, motion to approve the variance was made by Maggard, seconded by Heuck and carried. It has DeCastro Aye, but I believe this was the one that I recused myself from.

A motion to remove his name from the vote was made by DeCastro and approve the minutes as amended, seconded by Maggard and carried.

1 Abstention

Public Hearing Opened

The next item on the agenda was a request from Christopher Wylie, 5346 Elm Drive, SBL# 115.12-2-47 for a variance from Section 360-194A (2) fencing and walls to allow for a 6' wooden fence in the front yard from the maximum height of 4'. The property is presently zoned R-1, one family residential.

Machelor: Would you state your name and what you would like to do.

Christopher Wylie, 5346 Elm Drive, Lewiston. My request is to have a variance for a 6' fence on a patio in lieu of a 4' fence. The primary reason is for accessibility purposes for me coming out from the front of the driveway. The patio will be right there. It's really an extension of the walk way we already have. If you see the map, we really don't have much of a place, there is no back yard really to go in there. There are power lines back there. It's basically for privacy. The fence is not fully enclosed. There is 8' and then a 4' open and 16' and 4' open and 16'. It's completely open on the Annover side.

Machelor: I'm not sure I understand. On here I have a pink highlighter.

Janelle, Chris's wife: This is the front yard, this is the driveway and the patio is going to be 20'x20'. There is a concrete walkway so we are just extending that to have a better place for us to hang out.

Machelor: You don't need a variance for the 20'x20' concrete patio uncovered.

Wylie: We want a 16'x16' fence there for some privacy.

Machelor: This piece is going to be 4' and then 16' of 6' fence.

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Wylie: It will be 16' here and 16' here, it's an I-shape.

Machelor: It will be 6' tall without the lattice?

Wylie: We would prefer it to not have the lattice and just be 6' tall. But we are willing to do maybe 4' and then 2' of lattice if we need to. We would rather have it be solid but we are open for some options.

Mr. Wylie: We're asking to go from 4' to 6'. If you said no we can't do that but we could do 4' and then 2' of lattice so it's not completely enclosed from the top up, that's what we are trying to say there.

Conti: You're not looking to put 2' of lattice on top of a 6' fence?

Wylie: No, not at all.

Machelor: We don't want to get in to people's preferences. That 6', 32' of 6' fence, you yourselves won't be able to see out either. If you are sitting down behind a 6' fence, all you are going to see is fence right?

Mr. Wylie: We want it so we can have an area with the picnic table and everything and we're not necessarily staring across the street eating our hamburgers looking at the neighbor and that sort of thing. Other neighbors can go in to their back yard. We don't really have a back yard to go in to, plus even the limited back yard that we do have is not really accessible to me because I would have to try and go around the lawn which really doesn't work too well in a wheel chair or we would have to do a concrete driveway around the back which would be extremely cost prohibitive to me to try and even do that.

Machelor: We don't have to get in to that. Your request should stand on its own.

Mr. Wylie: We would still be able to see to the side. It is primarily for privacy and then there's 42' on the one side from the road and then 80' on the other.

Machelor: Do you want to weigh in on at all Joe?

Conti: Between the end of the 6' fence and the house will be open?

Wylie: From the house to the fence is 4' and then.....it's going to be open and the driveway side is open as well.

Muzzi: I noticed on the house drawing here, do you not have a patio on the back end?

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Wylie: There is a little concrete pad that's there but there is also a huge tree and shed back there as well and power lines.

Maggard: Is this fence going to be even with the ground? It will sit right in to the ground?

Wylie: Yes.

Maggard: It's not going to have stilts on it to make it higher?

Wylie: No, on the ground.

Machelor: How high will the porch be?

Wylie: The porch will be ground level with the driveway.

Machelor: It's not going to be raised at all? When you get on your porch you have access to your house directly?

Wylie: Right.

Machelor: I just wanted to see if the fence was going to be 6' above the patio or 6' above the ground?

Wylie: It will all be level.

Mr. Wylie: If it's not level, I won't be able to get up on it.

Machelor: I was more concerned about whether you were going to have a patio that was 18" tall and then the 6' would be only 4.5' from where the patio is.

Maggard: What kind....on the asphalt drive are you going to have any people looking in at you from that angle?

Mr. Wylie: If I understand you correctly this side of the driveway which will be concrete now, it's asphalt now but will be concrete, from that side people will be able to look in but.....our neighbor has a fenced area with his pool there and everything so it's not like.....people coming by up the street maybe if they are going around the block on a bike or something.

Maggard: You will have a little bit of privacy even though it's open?

Wylie: Yes.

Conti: You are the corner house right?

Wylie: Corner on the one side and then we are the second house on the other side.

Muzzi: Are there any homes on your street or in the area that are set up with fencing in the front that exceeds 4'? You did put something in your packet but it was hard for me to ascertain where that was. You had mentioned there was another property that had the fencing like that. I think you showed somebody's side house?

Wylie: Maybe in the pictures?

Machelor: I see the picture with the snow fence. Picture number 9?

Wylie: That is actually the neighbor's house. That is the side of his fenced off back yard. He's on a corner too.

Maggard: What is your preference with the lattice work on the top?

Mr. Wylie: I would rather.....

Wylie: The lattice is more expensive.

Conti: We're not here for that anyways. If it's lattice or not it's 6'. We are either going to grant the variance at 6' or not. We're not here to discuss if it's going to be lattice or not.

Muzzi: Part of the questions that we need to find out and get answers on the record are have you looked at other ways to achieve your privacy without having to get a variance from us?

Mr. Wylie: That's a good question. I appreciate it. The issue with vegetation and things like that because it has come up is really a lot of this comes down to accommodations in the wheel chair. It's the same as stand as you're able kind of thing. I can't tend to the vegetation, Janelle can but there is a whole bunch of other things that I also can't do like the lawn mowing or anything else so it becomes prohibitive to try to say we can do it that way and it would probably be a lot easier but it would also be more work that I'm not able to do and I can't really afford to pay somebody to do the work either. That's where it gets tricky. A lot of this really goes back to my disability and inability to be able to....I've looked at other options and there may be others that work for some but from accessibility stand point don't work very well for me if that makes sense?

Muzzi: Yes, it does.

Machelor: There is no one else to speak.

Public hearing closed.

Machelor: Are there further questions from the Board?

A motion whereas the Zoning Board of Appeals finds that pursuant to the prior discussions that the benefit to the applicant outweighs the detriment to health, safety and welfare of the community was made by Conti,

Muzzi: I'm wondering if we need to add because it goes with the property, if we need to add that it just pertains to that length of fence and not that down the line when they may not have the home anymore that somebody puts a 6' fence up across the front of the lawn.

Machelor: Do we have to say that?

Seaman: That's a fair statement from Anita I think, just to make it clear that this is a variance that's being requested and if approved only relative to this particular length of fence and not the entirety of the front yard.

Conti: That's a good point.

Motion to include the condition that the variance is only for the fence on the property at the time which is 16' x 16' in front of the house and not anywhere else on the front of the property was seconded by Muzzi and carried.

Muzzi Aye, Conti Aye, Machelor Aye, DeCastro Aye, Maggard Aye

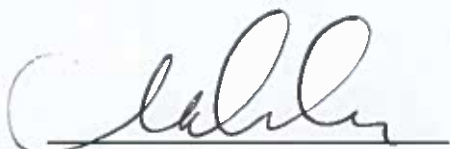
The next meeting will be March 12, 2020, at 6:30 P.M.

A motion to adjourn was made by DeCastro, seconded by Maggard 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 February 13, 2020, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Christopher Wylie, 5346 Elm Drive, SBL# 115.12-2-47, requests a variance from Section 360-194 A. (2), Fencing and walls to allow for a 6' wooden fence in the front yard from the maximum height of 4'. 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
#N263662

2/6/2020