

ZONING BOARD OF APPEALS MEETING

June 16, 2016

6:00PM

The meeting was called to order by Chairman Bill Gabak at 6:14PM. Roll call by Clerk, Cindy Schiminske, found the following Board Members present:

Neal VanLiew
Kathy Taylor
Fritz Allen
William Gabak, Jr., Chairman
Phil DelloStritto, absent

Also in attendance: Brendan Grillo
Atty Sam Giacona
Andrew Leja, Planning/Zoning Special Counsel
Don Bowen, Zoning Officer

The purpose of this meeting was to hear the following request:

Brendan Grillo, 5394 West Lake Road, Tax Map # 137.02-1-30.1, is requesting the following variances: a variance to increase the volume of the existing non-conforming accessory structure by replacing it with a new structure that exceeds an aggregate of more than 25% (Section 9-2A(2)); a side yard variance of 5.4 ft from the required 20 ft (Bulk & Use Table Lakeshore District); and a variance to locate the structure less than 50 ft to the mean high water mark of Owasco Lake (Section 6-9D(2)).

Mr. Grillo's attorney, Sam Giacona, spoke on the applicant's behalf. He stated that Mr. Grillo is requesting the construction of a 14' x 36' shed to replace a shed that was previously in the same location with the dimensions of 18' x 14'. The previous shed was dilapidated, falling down and dangerous. Mr. Grillo tore it down in mid to late May and submitted an application to construct a larger shed. He has no attic or basement and it will be used for storage space. The square footage of the entire lot is approximately 19,000 sq ft, and 25% of that would mean he could have approximately a square footage of around 4,700. The house encompasses approximately 3,000 sq ft and the new shed would be approximately 500 sq ft putting it below the 25% as required. They are looking for a side yard variance. The previous shed's location was 5.4 ft from the property line and they are looking to keep it at that same distance from the line. In terms of character of the neighborhood, Atty Giacona submitted some pictures of properties in and around the area with similar structures and side yard setbacks that do not have the 20 ft setback.

Chairman Gabak questioned why applicant tore the old structure down and that he probably should have left it until this meeting. He advised that the Board could no longer honor the 5.4' side yard setback now that it has been totally torn down. They have to abide by the 20' setback now. Special Counsel Leja explained that according to the law, once a person who had the non-conforming structure on their property eliminates the use for that structure, they lose the ability to use the non-conforming use provisions to be able to keep that structure the way it is or add on 25% to its volume. Once you demolish the structure, the law then existing at the time kicks in automatically and you have to abide by that. In this case, the applicant is seeking a variance, and it's not that he's seeking to keep the building

in the same location where it was, he is seeking a variance now for a 20 ft setback all over again. The Board has to interpret it as a brand new application and interpret that as not having been there before.

The floor area of the house is 2472 sq ft plus the garage of 224 sq ft, for a total of 2696 sq ft. Twenty percent of that is 539 sq ft and the new building will be 504 sq ft, so the applicant is in compliance with section 7-16F about total area of unattached structure to not exceed 20% of the floor area of the principal structure.

Chairman Gabak stated that applicant is in the floodplain. Mr. Bowen stated that he has spoken with Mr. Grillo about the material for the structure due to the fact that he is in the floodplain area, such as pressure treated wood, etc. The structure will be approximately 13' high, which is within the 35' allowed.

Atty Giancona stated Mr. Grillo has spoken with the neighbor most affected by this, Dennis Zach, and he didn't have a problem with it. The Board brought up the fact that the old building was 18' wide, the new building will be 14' wide, and questioned why the applicant couldn't move over 4 ft from the property line, as they would like to see at least 10' from the property line.

Mr. Bowen brought up the fact that the town's sewer line traverses all those properties. He had reviewed it with the Water Supt. and he wanted to confirm that the building is not encroaching upon that line. Special Counsel Leja stated that Mr. Grillo will need to check and made sure that he is not encroaching on the easement. The best way to do that would be to do a search in Real Property records to find out exactly where it is and then stake it out so the contractor will know where not to go.

Chairman Gabak stated that this application is exempt from the Type 2 SEQR.

Chairman Gabak reviewed the five factors in granting an area variance.

Chairman Gabak stated he will also require gutters so the roof drainage will be away from the southern property line. Atty Leja stated that once you put gutters on and start directing storm water drainage, then you own that drainage. You have to make sure the rate and volume of flow onto a neighboring property is no greater than it was without any kind of drainage at all. Just let it sheet run over grass, then there is no requirement. But in NYS once you start channeling it with a gutter, swale, pipe, anything like that, then you're subject to the requirement that volume and rate of flow can't exceed what it was before you started.

A motion was made by Kathy Taylor to grant the side yard variance of 10', seconded by Chairman Gabak. Roll call vote was taken by the Board.

MOTION APPROVED 4 AYES 0 NAYS

Motion to adjourn made by Bill Gabak, and seconded by Kathy Taylor. All in favor. Time was 6:38 PM.

Respectfully submitted,

Cindy Schiminske
Clerk, Zoning Board of Appeals