

ZONING BOARD OF APPEALS MEETING

July 21, 2016

6:00PM

The meeting was called to order by Chairman Bill Gabak at 6:00PM. Roll call by Clerk, Cindy Schiminske, found the following Board Members present:

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

Also in attendance: Amy Jakes-Johnson
Leon and Elizabeth Cronce
Fred and Veronica Farrell
Beth and Peter Caplan
Andrea Cosachov
Heather DiPaolo
Andrew Leja, Planning/Zoning Special Counsel
Don Bowen, Zoning Officer
Joe Flaherty, Alternate ZBA Member

Chairman Gabak made a motion to approve the minutes of June 9, 2016 and June 16, 2016 as presented by ZBA Clerk, Cindy Schiminske. Approved AYES 5-0.

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

- (1) Philip and Amy Jakes-Johnson, 4606 West Lake Road, Tax Map #144.00-1-46.2, are requesting a variance for an 8 ft tall fence, which exceeds the maximum of 6 ft allowed. Ref. Town of Fleming Zoning Code: 7-16 A(3).

Amy Jakes-Johnson spoke about the fact that her neighbor's property to the south (which is very close to their property) is being rented out and there are a lot of renters. They are looking for a privacy fence so that they can sit outside and 6 ft would not be high enough to give them that privacy.

A motion was made by Chairman Gabak to vote on this request and seconded by Kathy Taylor. Roll call vote was taken by the Board.

MOTION APPROVED 5 AYES 0 NAYES

- (2) Leon and Elizabeth Cronce, 6070 West Lake Road, Tax Map # 130.06-2-43.1, are requesting the following variances for a 20' x 25' storage building: north side yard variance of 6.5ft from required 20ft; south side yard variance of 9ft from required 20ft (Bulk & Use Table Lakeshore District); a variance to locate the structure less than 50ft to the mean high water mark of Owasco Lake (Section 6-9D(2)); and a variance to the requirements of Section 7-16 A(2)e which limits the total area of the proposed structure to 20% of the floor area of the principal structure.

Leon Cronce started out by apologizing for not following the proper protocols. He explained that he had been told by a couple of individuals, a person that sells buildings in Fleming and a contractor, that they wouldn't need a permit. They understand that they should have checked before they put the building up. They indicated that they spoke with the neighbors prior to putting the storage building up and they all thought it was a very good idea because prior to that they were leaving boats, kayaks, paddles, etc, in a parking area. He also stated his neighbors sent in letters showing their approval of this structure. They do not plan on putting electric in there. It would just be a storage area for their equipment.

Chairman Gabak brought up the fact that there was also a small utility shed on their property, and asked the Cronces if they were aware that this is an existing accessory structure and they are only allowed one accessory structure per property. The Cronces were not aware of that.

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

Mr. Cronce stated that the total square footage of the house is about 1650 sq ft and that 20% of that would be 330 sq ft and their building is 500 sq ft. So, they are 170 sq ft over what is allowed. Chairman Gabak and the Board agreed that this was a substantial request and that the alleged difficulty was self-created. Mr. Cronce stated that he could take the pre-existing old shed down if that was a remedy

Atty Leja pointed out to the Board that there are 2 issues going on here. One is the placement of the building itself without any kind of permits and the other issue is the size of the building and the variances requested. They are related but they are 2 different issues. So, this Board is faced with a non-compliant building that was illegally constructed on the property and now the applicants are coming before the Board with the request for variances associated with that. The Board could take a vote and approve or deny the application as it is situated. The applicant also has the right to request the Board to table their decision and allow them a chance to go back and review their application and decide whether they want to come back with any alternative proposals. But it's still a building that's illegal. Atty Leja asked if the building was being used for anything right now. The Cronces indicated it was being used for storage. Atty Leja stated that the Board can't sanction their continued usage of that for any purpose whatsoever. If the Board is amenable to tabling to allow them to come back with a proposal, they are able to do that; but, in the meantime, they cannot use that building for any purpose whatsoever.

The Cronces requested the Board to table the variance request.

At this time, Chairman Gabak stepped down from the Board due to the fact that his daughter, Heather DiPaolo, is the new neighbor of Mr. Farrell. Chairman Gabak assigned Kathy Taylor to be the Chairwoman for this variance, and Joe Flaherty, the alternate ZBA member, to sit on the Board so there will be a full five member board.

- (3) Frederick J. Farrell, 4919 West Lake Road, Tax Map # 144.00-1-5.112, is requesting the following variances in order to add an accessory structure to the property: a south side yard variance of 4.5 ft from the required 20 ft (Bulk & Use Table Lakeshore District); a variance to locate the structure less than 50 ft to the mean high water mark of Owasco Lake, Section 6-9D(2); and a variance to the requirements of Section 7-16 A(2) which doesn't allow an additional "shed" structure as no principal structure (dwelling) exists at the property.

Mr. Farrell stated that 2 yrs ago, he bought 1.5 acres with 102' of lake frontage from Alan Kozlowski on West Lake Road. When he and his sister-in-law purchased it, there was on the south side of the property a staircase leading down to an existing shed. When you went down the staircase to the bottom there was one landing, two landings and when you got to the bottom of the landing, there was a deck and then there was another deck which formed an "L". In the middle of the "L" was a shed. The Town of Fleming Planning Board when they split the property, split it where part of the deck remained on the property that Fred and Rachel bought. The shed and the other part of the deck remained on Al's property. Al sold Fred the shed for an additional \$500.00 so that he could reassemble kind of like a mirror image on the other side of the steps, basically sliding it from one side to the other side. In the Spring, it became an issue when Al wanted the shed back and left where it was originally. Mr. Farrell is not asking for any increase in size. He is not modifying the building whatsoever. He is just asking to be allowed to complete that move. It's an 8' x 10' shed and 2 4' x 12' decks.

Heather DiPaolo, the new neighbor of Fred, voiced her concern over the fact that she was under the impression from the realtor when they were buying the property from Kozlowski that all existing structures were belonging to them and that hindered what they could build, as it's potentially cutting the square footage in half of what they could build. Mr. Farrell is moving a building from Lot A to Lot B, he's getting a 200% increase on his lot but she wants assurance from the Board to know that she can get a 200% increase also. She also had a problem with the 4.5 ft side yard variance. Fred indicated that it is not 4.5 ft, it's 20 ft.

Another neighbor, Andrea Cosachov, indicated that she had a structure on the lakeside as well, a good sized one. At some point, if she would like to refurbish that, then how big can she go with that, if they are going to set that kind of precedent with Heather. She stated that you have to be really careful what you do there. She doesn't want to see a snowball effect.

Beth Caplan indicated that when she came before the ZBA three different times for her building, Fred wanted to make sure that she was going to be 20 ft from the property line. She would also like to see it become a nicer, more attractive area. She stated that it gives him the opportunity, in the future, that he can add up the total volume and he can build up to 25% more than what he has and that's a concern to her.

The Board had an issue with the fact that Fred purchased the shed to place on a lot with an existing shed, which is not allowed.

Don Bowen wanted to clear some things up for the record. Last summer, he stopped at the property and saw what appeared to be some trenches, perhaps footers being dug, with several bags of concrete. He indicated that he spoke with Fred on a Monday night and asked what his intentions were. At that time, they discussed the possibility of moving the shed that was not on the land Fred bought onto the land he bought. He advised Fred that it was not allowed inasmuch as that would be an additional structure on the property and there was no primary structure on the property. Mr. Bowen asked when Mr. Farrell said "slide it over", what was he intending to slide over? To which Mr. Farrell replied, the shed and the deck. And Mr. Bowen disagreed with that and told him it was not allowed.

Atty Leja stated that there are two separate issues before the Board. The threshold issue is whether the applicant is allowed to put a second structure on the property where there is no principal dwelling use. So if the Board finds that he is allowed to do that, for whatever reason, then you can move to the next stage, which is the placement of that structure and whether you are in the mind to grant variances for it. But the threshold's issue is that you've got a second structure on a single piece of property without a principal dwelling on it. That's the hurdle you have to get over. Once you get over that, then you can get to the setbacks and the amount of variances granted.

Atty Leja stated that you have a vacant piece of property with a non-conforming use on it, being the old storage shed that was there, that's allowed under the law. However, the applicant now is seeking to move another shed structure from an adjacent property over to this same property and that's where the law is clear that you can't have multiple accessory structures on a property which doesn't have a dwelling unit on it.

Mr. Farrell reviewed his opinions on the five criteria with the Board.

Chairwoman Taylor reviewed the five criteria with the Board.

Fred stated that it appears the hangup is that there are two buildings on that shorefront. If he was to take the two buildings and make them into one, would he be allowed to have the equal square footage? If he were to take each shed which is 80 sq ft each and combine them into one building of 160 sq ft, would that be feasible? Atty Leja interjected that he was asking a hypothetical question of the Board. He indicated the Board would want to see where it was going to be placed, and the exact size of the structure. Atty Leja stated that Fred could request the Board to table the issue until he comes back with an alternative plan. Fred would like to have it tabled.

Chairwoman Taylor tabled it until Mr. Farrell comes back with another plan to present to the Board. Chairwoman Taylor questioned Atty Leja as Mr. Farrell's already moved the shed onto his property, would the same rules apply to him as to Mr. Cronic that he can't use that shed? Atty Leja responded that he is not allowed to use the shed for any purposes right now. It is not allowed. It is illegal. Until he gets relief from the Board, the Board can't sanction any type of usage of that.

Mr. Farrell asked Atty Leja since it's split into two districts, how would that apply? Fred stated that $\frac{3}{4}$ of the property is in the agricultural district. Atty Leja stated the part that is in the ag district follows ag rules. The part in the lakeshore district follows lake rules.

Don Bowen pointed out that the applicant is permitted to increase the non-conforming structure 25%. So a 8' x 10' building or 80 sq ft, 25% of that is very small. So once he goes over the 25%, he's back to the Board.

Mr. Farrell indicated he would need a month to prepare and he should be ready by the next meeting on August 18th.

Motion to adjourn made by Kathy Taylor, seconded by Phil DelloStritto. All in favor. Time was 7:35 PM.

Respectfully submitted,

Cindy Schiminske, Clerk, Zoning Board of Appeals