

ZONING BOARD OF APPEALS MEETING

May 19, 2016

6:00PM

The meeting was called to order by Acting Chairwoman Kathy Taylor at 6:00PM. Roll call by Clerk, Cindy Schiminske, found the following Board Members present:

Kathy Taylor, Acting Chairwoman
Phil DelloStritto
Neal VanLiew
Joe Flaherty, Alternate
William Gabak, Jr., Chairman - absent
Fritz Allen - absent

Also in attendance: David & Cheryl Wawrzaszek
John & Nancy Breault
Jessica Hanley Johnson
Kathleen Cuddy
Attorney Jonathan Pollack
Don Bowen

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

1. **David Wawrzaszek**, 5595 Silver Street Road, Tax Map # 130.00-1-14.13, is requesting a rear yard area variance of 10 ft from the required 30 ft. for an addition to an existing building. Ref. Town of Fleming Zoning Code Bulk & Use Table R-2 District.

Mr. Wawrzaszek explained that there is an existing barn behind his house. At the time they poured the concrete for the barn, about 4 years ago, they had leftover, so they decided to add a pad behind the barn. Now he would like to put a peak roof, just a shelter structure, over the concrete pad. Behind the barn is 40 acres of farmland. He would come out about a foot from the existing pad with 3 poles and a roof. He has a lot of equipment that he would like to store there to get them out of the weather. The barn extends north/south, and the roof would run east/west, as it's much less expensive than incorporating it into the barn.

A motion was made by Acting Chairwoman Taylor to vote on this request and seconded by Neal VanLiew. Roll call vote was taken by the Board.

MOTION APPROVED 4 AYES 0 NAYS

2. **John and Nancy Breault**, 4738 West Lake Road, Tax Map # 144.00-1-38, are requesting the following variances in order to add an accessory structure to the property: a side yard variance of 17 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)e which limits the total area of the proposed structure to 20% of the floor area of the principal structure.

Mr. Breault would like to place a 24' x 24' garage off the side of the house. He explained that he initially put in for a bigger garage but was denied that and told that he would have to go smaller to make it about 20% of the existing house structure. Since he added onto the house, it is bigger than it currently shows on the map. He added on approximately 210 sq ft so he is up to almost 2000 sq ft. He would like to have a 2 car garage for the vehicles to make it easier in the winter and to keep things out of the weather. The current parking area with gravel is bigger than the 24' x 24' proposed garage. He is exactly 17 ft off the side of the property line, which he can move over 3 ft. He didn't understand the 50 ft variance away from the lake. He is 75 ft away from the seawall and the house is even closer to the lake than the garage would be.

Acting Chairwoman Taylor stated that they had received a letter from Thurston Law Office representing Mr. Donnelly, the adjacent property owner. Attorney Jonathan Pollack from Thurston Law Office was present and advised that there were some concerns with the structure as it is being sketched out now. They are not necessarily opposed with the structure being erected there. They just want to be sure there is some oversight and that it is done properly. He stated that there were a number of issues that the project raises. The primary one is the water runoff. The neighbors are already having issues with storm water. They would like to see some type of mitigation in place for that. Also, there was a concern that it was very close to the septic system and to insure that it was in the proper place. Another concern is that it would block the view of the lake. He would ask that a visual EAF be done to see how that is going to impact the lake view from the neighbors' houses. Chairwoman Taylor stated that she visited the property and she didn't see that it would obstruct the view. Atty Pollack also indicated that they didn't want the structure used as a party house or anything like that, no septic systems, just to be used for the intention of what the structure is, which is just a garage. Mr. Breault stated that the only thing he would put in there is electricity for a light and the garage door openers. He has no intention of putting any septic systems in. It would strictly be a garage. Atty Pollack stated that it is a non-conforming structure in a lot of different ways and there needs to be some oversight in the process to make sure it is done properly.

Mr. Breault stated that he will be matching the color of the house and color of the roof with the structure. Chairwoman Taylor stated her concern that there was another structure on the property. Mr. Breault indicated it was a little 10' x 10' shed which was existing when he bought the property. She said it was going to take up more than the allotted amount that you can add to the property. Right now what they are proposing for the garage is 576 sq ft. Twenty percent of what you can actually expand is 411 sq ft. This existing tool shed takes away from that. Mr. Bowen thought it was 10' x 14'. Mr. Breault was not sure as he did not measure it. Mr. Bowen stated the point was that these are cumulative, so out of the box you have whatever the size of that accessory structure is, then you're adding the garage to it, so the total of that counts towards the 20%. Mr. Breault stated that he is not going oversized. He is just trying to park 2 cars in a garage. Chairwoman Taylor stated that you are allowed so much additional to what you already have existing for the amount of property that you have. It would come down to the fact that they would have to get rid of the shed or cut down on the size of the garage because they are way over the allotted 20%. Without the tool shed, the Board might be able to go the 576 sq ft. Mr. Breault stated that if he got the variance to put in the 24' x 24' structure, he could sell the toolshed or tear it apart, if that's what he needs to do. The Breaults were advised that they would have to address the drainage by installing gutters on the garage and channeling that water away. Mr. Breault stated that they had just put gutters on the house and they would most likely put them on the garage too.

Jessica Hanley Johnson, a neighbor, said that she understands them wanting to have a garage. If the garage is going to be exactly where their parking area is now, she doesn't see that many issues with it. Her concern is when the Breaults put a driveway in, the water coming down the driveway is going to flood the Breaults' garage and create more issues. They have talked about putting rocks in the Johnsons upper driveway to prevent some water issues, which they plan to do, but rocks don't absorb water. With the driveway being lower, a lot of water comes flowing down the driveway from the road and the hill and she would hate to see them put in a garage and water come flowing down the driveway into the garage. Her garage has flooded a couple of times. The Breaults stated that the garage will be on a concrete pad, 5" above the ground.

Mr. Breault stated that he had a permit to asphalt the top of the driveway and the driveway. There's a sidewalk on the house side and the other side is all grass. The builder is Peterman Lumber. Atty Pollack asked to review the garage plans. Mr. Breault has owned the property since 2012 but just moved in December 2015. Board Member Phil DelloStritto asked if he had noticed a wet area near where the leach field is when we get a lot of rain. Mr. Breault stated that it soaks it up real fast. He indicated that the water is coming from the low part in front of the Johnsons' house. It comes down West Lake Road and it puddles there. Mr. Breault had a load of gravel, crusher run brought in and he put his driveway up higher to block the water coming down and he doesn't have any more water issues in his driveway. He won't blacktop it until all the work is done on the garage

Mr. Bowen wanted to clarify a few things. First, that the Town doesn't issue driveway permits. Mr. Breault said it came from DOT. Mr. Bowen wanted to caution them on the blacktop. The Zoning Law does have a 75-25 ratio for greenspace. Blacktop driveways are impervious, so that would count towards the 25% coverage. A gravel driveway usually does not. The footprint of the building, the house and whatever sidewalks they may have will count towards impervious surface. Mr. Bowen did some quick math with just the building and the house and it's under 25%. Since Fleming doesn't issue driveway permits, we don't usually get involved; but Mr. Bowen said he receives calls from folks saying their neighbor is putting a driveway in and they are concerned about the runoff, so he advised the Breaults to do some homework on that so that they don't exceed that 25% in the process of the paving. The Zoning Law talks about preserving greenspace as much as possible. Mr. Breault said the blacktop will only be on the upper part, not down below as they can't go across the right of way.

Mr. Bowen also wanted to clarify the high water mark. He had a map showing the mean high water mark and explained that it's sort of an imaginary line on their property where if the lake came up to its flood level by definition, which is 717.13 ft, which is probably 5 ft at least over the current level, how far back on the property it would come. The maps from the county's GIS website detail where the floodplain is. They are more than 50 ft from the shoreline, but the Zoning Law addresses structures being 50 ft back from the mean high water mark. It's hard to get that unless you have a very steep incline.

Mr. Bowen pointed out that even though the shed was pre-existing, it counts towards the total. Mr. Breault stated he would really like to keep the shed as he just re-sided it and repainted it. The Board stated that they understood that but they are required to stay within the parameters of the law.

Acting Chairwoman Taylor stated that right now, not counting the shed, they would be allowed 411 sq ft beyond the living space, based on 2056 sq ft. (due to the fact that the lot is less than one acre).

The 24' x 24' garage would be 576 sq ft. Mrs. Breault stated that although 2056 sq ft shows on the application, the architect told her it is more like 2100 sq ft. Mr. Bowen stated that using the 2100 sq ft, they could put up a 420 sq ft bldg, if the shed were not there, without coming before the ZBA. However, the shed is approximately 10' x 14', which is 140 sq ft., which when added to the 576 sq ft of the garage, would come to 716 sq ft, which is a little less than 35%. Mr. Breault stated that you can't put 2 cars in a 410 sq ft structure.

Chairwoman Taylor suggested that the Board could postpone the meeting until they have had time to review all of the material and reschedule it when the Chairman is back. The Breaults were agreeable with that. Chairwoman Taylor made a motion to postpone the meeting until June 9th at 6:00pm to continue this variance appeal, seconded by Phil DelloStritto. All in favor.

The Breaults were requested to provide some drainage information as to where will the water from the gutters will go. Mr. Breault indicated they will be pointing east towards the grass.

Chairwoman Taylor made a motion to approve the minutes of April 21, 2016 as presented by ZBA Clerk, Cindy Schiminske. Approved AYES 4-0.

Motion to adjourn made by Kathy Taylor, and seconded By Neal VanLiew. All in favor. Time was 6:41 PM.

Respectfully submitted,

Cindy Schiminske
Clerk, Zoning Board of Appeals