

ZONING BOARD OF APPEALS MEETING
December 17, 2015
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:

William Gabak, Jr., Chairman
Phil DelloStritto
Kathy Taylor
Joe Flaherty
Neal VanLiew, absent

Also in attendance: Robert Canino
Ronald Ross
Margaret Ross
Bob Eggleston
Don Bowen
Attorney Andy Leja (Town Counsel) arrived at 6:30pm

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

1. Robert Canino, 2763 Sand Beach Road, Tax Map #123.00-1-12.1, is requesting a side yard area variance from the required 25ft for the construction of a 12' x 16' shed. Ref. Town of Fleming Zoning Code Bulk & Use Table R-2 District.

Chairman Gabak asked Mr. Canino whether he was looking for a 10ft or 12ft variance. Mr. Canino stated that he measured it and it's about 14 ft. from the property line. Mr. Canino explained that he would like to build a storage shed to replace the 12' x 12' canvas one that that was there and damaged last winter. He cleared out the wood pile and poured a concrete pad, not realizing that he had to get a permit to replace what was already there. It would be basically to store his tractor and lawn equipment.

Chairman Gabak made a motion to approve the side yard variance, seconded by Kathy Taylor.

Roll call vote was taken by the Board.

MOTION APPROVED 4 AYES 0 NAYS

Joe Flaherty then stepped down from the Board due to his personal friendship with the next applicant, Ronald Ross, who has come before the Board with a revised proposal.

2. Continuation of Ronald Ross, 5878 Sand Beach Drive, Tax Map #123.18-1-70, proposal to construct a replacement dwelling.

Mr. Eggleston, the architect for Ronald Ross, spoke on the applicant's behalf with a revised proposal dated December 6, 2015. Mr. Eggleston reviewed the revised Narrative that he prepared for this Variance Application, which Narrative is attached hereto and made a part of these minutes.

He indicated that the increase is now 102.4%. It is a more compact house. The Board expressed concern that it was still a large increase. Chairman Gabak also had concern about the garage with the finished living space, bathroom, heat, deck, windows, French doors or sliding door on the second floor. It was an indication to him that this could be used as a residence. Mr. Eggleston stated the Rosses received a variance 25 years ago to build it and it was finished off the exact way it is today. It was finished off as a supplemental living space, not an independent dwelling. It doesn't have a kitchen and it only has a bathroom and one large recreation area. Mr. Ross indicated he had obtained a Certificate of Occupancy for the garage living space at the time it was constructed in 1988. Chairman Gabak stated that the Fleming Zoning Laws do not permit two structures on a single lot for the same use and also stated that there was still a capacity for it to be finished off. Mr. Eggleston stated that it is not a separate dwelling unit. It is accessory finished space for recreation purposes and part of the main dwelling but not a separate dwelling unit. Kathy Taylor stated that they are putting up a 1400+ sq. ft. building on the one piece of property but there is still living space above the garage that you've got to add into it. And that's making it more non-compliant. You cannot have two separate living spaces on one lot.

Mr. Eggleston stated that according to NYS code, you have to have a bathroom, kitchen, and certain criteria to have a dwelling unit. It is an accessory living space but not an independent dwelling unit. Chairman Gabak stated that he understands that but human nature is that 5 yrs. down the road, Mr. Ross could say that he could use some more living space and throw a quick kitchen in there, some partitioning walls with a couple of bedrooms and that's illegal.

Mr. Ross stated that he received approval 25 yrs. ago to build it. The garage was complete at the time he got the Certificate of Occupancy. He stated that the Board is looking at something that happened 25 years ago, and that you can't go back and fix something that happened 25 years ago. It's got to be grandfathered.

The permit that was obtained for that structure back in 1988 was labeled garage/storage. Mr. Eggleston wanted to look at the reference in the Zoning Code on "living space" because right now it's been presented vague. He needs to see exactly what it says to make sure it is being applied correctly. Don Bowen indicated that there is no definition in the Zoning Law for living space, there is for one family dwelling. The Bulk & Use Table in the Lakeshore District states that permitted uses are one family dwellings and you can have accessory structures. Mr. Eggleston's position is that there will be one dwelling unit and one accessory building that has a garage and accessory living space but not an independent dwelling unit.

At this point, Town Counsel Andy Leja arrived. Chairman Gabak requested that Mr. Eggleston review the garage scenario with him. Atty Leja acknowledged that he had received a copy of the revised submittal and Mr. Eggleston reviewed the issue of the living space above the garage with him. Mr. Eggleston indicated that nothing had been changed in 25 years in the structure. It has never been rented, never been used by anyone outside of the family. It was used by Mr. Ross's kids as extra space. Don Bowen reviewed what was contained in the living space. Atty Leja asked what the square footage of the upstairs space was, to which Mr. Eggleston replied about 1000 sq. ft. Atty Leja stated that Mr. Ross's proposal is to raze the existing cottage, build a new building in its place that's 1427 sq. ft. He questioned what the plan was for the 1000 sq. ft. above the garage. Mr. Eggleston replied to keep it exactly as it is, no change. Atty Leja stated that it was never permitted as living space. Mr. Eggleston stated that 25 yrs. ago terminologies and procedures weren't as precise as they are today. The Certificate of Occupancy was granted; the building inspector walked through it, saw everything and granted the Certificate. Andy

Leja stated that's not determinative. There's 1000 sq. ft of living space that is not being factored into a variance that's requesting 1400 sq. ft. Mr. Eggleston replied that will decrease the percent of increase that they are requesting and that will substantially help them as they'll probably be down to a 50% increase instead of a 102% increase. He would like to go back and recalculate the numbers. Atty Leja asked him to walk through how that is going to help them. Mr. Eggleston said that instead of 700 to 1400 sq. ft., they are going from 1700 to 2400 sq. ft., so that's a smaller increase in the change. Atty Leja stated that right now they are taking credit for 1700 sq. ft. of living space that currently exists on that property and they want to go up to 2400 sq. ft, to which Mr. Eggleston concurred. Chairman Gabak stated that they are calling the space above the garage living space, which Atty Leja confirmed. Atty Leja stated that they've got 1700 sq. ft. right now, so they don't qualify for a variance at all. Mr. Eggleston stated that the 25% increase is an allowance for a non-conforming structure. But Andy Leja indicated that that is off the table now because they are tearing down and rebuilding, which Mr. Eggleston agreed with. Now they must comply with the code. Atty Leja stated that if they build another structure that is larger, they could eliminate the 1000 sq. ft. over the garage as living space and that would be a setoff towards asking the Board for permission to build a larger home. The Rosses could do something with it to make it not living space.

Chairman Gabak stated that the garage is a sticking point with this Board and that this is a very unique circumstance. Atty Leja advised that the standard is that the Board is obligated to grant the minimum possible variance necessary.

Mr. Eggleston said that in light of the fact that the Board is down by one additional member, they would prefer not to have a vote taken as they are at a disadvantage. Motion made by Chairman Gabak to adjourn until next month, seconded by Kathy Taylor.

Roll call vote to adjourn the matter until next month was taken by the Board.

MOTION APPROVED 3 AYES 0 NAYS

Chairman Gabak made a motion to approve the minutes of November 19, 2015 as presented by ZBA Clerk, Cindy Schiminske. Approved AYES 3-0.

Motion to adjourn made by Chairman Gabak , and seconded by Kathy Taylor. All in favor. Time was 6:45 PM.

Respectfully submitted,

Cindy Schiminske
Clerk, Zoning Board of Appeals

ROBERT O. EGGLESTON, ARCHITECT

The Trolley Bldg
1391 East Genesee Street
Skaneateles, New York 13152

December 6, 2015 Revised
October 22, 2015

Town of Fleming
Zoning Board of Appeals
2433 Dublin Road, Auburn, NY 13021

Re: Ronald Ross – Variance Application
5878 Sand Beach Drive – Tax ID # 123.18-1-70

NARRATIVE

The existing Ross dwelling is on a 7,780 SF lot that is 42' wide on Owasco Lake and 39' wide on Sand Beach Drive. The dwelling is located 14.8 FT off the Owasco lake line, 7.3 FT off the south side property line, 6.9 FT off the north property line and 19.9 FT off Sand Beach Drive. The lot coverage is 34.9% and green space 62.1 %. The first floor of the dwelling is below 719' elevation so not conforming for buildings in a flood plain. The property also has a 2 car garage with a family room and bathroom above it at the west end of the lot. This property is served by public water and sewer.

This application is to rebuild a **one and a half** story dwelling with 3 bedrooms and 2 baths on a similar foot print but making it parallel with the side property lines. **The first floor will be 24 ft x 36 ft with a 10 ft x 22 ft deck and 6 ft x 10.5 ft porch.** The north side yard setback will remain at 6.9 FT while the south side yard setback increases to 10.0 FT. The lake yard setback will **increase to 19.4 FT** to the deck. The road setback to the entry porch will be **15.8 FT, consistent with the adjacent neighbors.** The coverage will be **36.7 %** and green space **60.5 %**. The first floor will be raised to the required 719 FT elevation in the flood plain.

This dwelling will become the applicant's permanent home and will now be **1,427 SF** with 65 SF porch and **220 SF** deck. The **area** of the new dwelling will be **102.4% larger but the porch will be 23.5% smaller and the deck 51.7% smaller. Overall, the structure will be only 67.5% larger than the existing house, porch and deck.** This is typical of the redeveloped properties in this neighborhood where 9 of the 15 homes are two story with an average size of 1,932 SF. The side yard setbacks are similar or greater than the neighbors, the house to the north is only 2.9 ft off the common property line and the house to the south is 8.1 ft setback. The lake yard and road setbacks are also similar to the neighbors, making the faces of buildings and decks align uniformly. **The total height of the house is 24.3 FT, which is less than the new house to the south.**

The Kick house to the south was recently granted a variance to be rebuilt 28ft x 36ft and has a large porch and deck. While their lot is 4 ft wider it is not as deep as the Ross lot and their house is 10 ft closer to the lake. Also, the Ross house is not as tall as the Kick house.

(315) 685-8144

Member of the American Institute of Architects

Section 6-9 Owasco Lake Watershed Overlay

Disturbance to the lakefront will be minimized by the following erosion control plan for this property. In addition pesticides and fertilizers will not be used on this property within 25 FT of the lake. The impervious coverage will be increased by only **1.8 %**; from 34.9 % to **36.7 %**. Minimal additional water runoff will result from this project which can be controlled by perimeter stone drip strips. No pollutants will be discharged, deposited or allowed to flow into the lake.

This property is served by public water and public sewers.

The permeable deck will be rebuilt between the house and the lake, with grass or landscaping in the areas between the existing decks and seawall/lakeshore. There will be no change of grade or disturbance within 50 FT of the lake other than the foundation of the dwelling.

CONSTRUCTION SEQUENCE

- 1) Install silt fence prior to demolition. Maintain throughout the construction period.
- 2) Remove the existing structure.
- 3) Excavate for the new foundation.
- 4) After foundation is complete and first floor deck in place, backfill and rough grade any disturbed area.
- 5) After roof and fascias are complete, install perimeter stone drip strips to control roof water.
- 6) After siding is complete and decks rebuilt, topsoil will be placed in planting area and the lawn areas seeded with hydro seeding or sod and landscaped areas planted and mulched.
- 7) After the site is stabilized and lawns established the silt fence will be removed.