

ZONING BOARD OF APPEALS MEETING

November 19, 2015

6:00PM

The meeting was called to order by Chairman Bill Gabak at 6:10PM. Roll call by Clerk, Cindy Schiminske, found the following Board Members present:

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

Also in attendance: Ronald Ross
Margaret Ross
Bob Eggleston
Bill Kick
Tammy Kick
Don Bowen
Attorney Andy Leja (Town Counsel)

Chairman Gabak made a motion to approve the minutes of October 15, 2015 as presented by ZBA Clerk, Cindy Schiminske, seconded by Kathy Taylor. Approved AYES 5-0.

Joe Flaherty then stepped down from the Board due to his personal friendship with the applicant. He wished to abstain from voting on this application as he did not want to create a conflict of interest.

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

Ronald Ross, 5878 Sand Beach Drive, Tax Map # 123.18-1-70, is proposing to construct a replacement dwelling and is requesting front, rear and side yard area variances; a variance to the minimum Green Space requirements (Bulk and Use Table Lakeshore District); plus a variance to the requirements of Article 9-2A(2) that limits the increase in volume of the proposed dwelling to 25% greater than the existing dwelling.

Bob Eggleston, the architect for Ron Ross, spoke on the applicant's behalf. He indicated that Mr. Ross has owned this property for approximately 31 years. He and his wife are looking at retiring, moving here and making it their permanent residence.

Mr. Eggleston reviewed the narrative that he prepared for this Variance Application, which is attached hereto and made a part of these Minutes.

Chairman Gabak asked what percent increase is the existing building to the new structure. Mr. Eggleston indicated that if you look at square footage, it's over 200%. Chairman Gabak stated more like 250%, for which he would be very reluctant to grant a variance.

Andy Leja questioned how many homes in that area that they surveyed are non-conforming in their dimensions. Mr. Eggleston indicated all of them. They are all original camp lots. Attorney Leja stated

that by bringing this house to an increase in size that's going to conform with the rest of the neighborhood, they are increasing the non-conformity of the neighborhood. Mr. Eggleston indicated that they would be consistent with the non-conformity of the neighborhood. Attorney Leja stated the neighborhood itself is intended to be conforming whenever possible to the zoning ordinance. The object of the zoning ordinance is to disfavor non-conformities whenever possible and to reduce non-conformities and convert them to conformities whenever possible. He then asked Mr. Eggleston to describe the other structures that exist on the property right now. Mr. Eggleston explained that there is a 2 car garage, the size is 28' x 40' and it has a 1062 sq ft footprint and it has a second floor which has a finished living space and a bathroom, which they use as a relief valve for their 900 sq ft cottage.

Attorney Leja was questioned by a Board Member as to whether the living space above the garage totals into the house property for the size of the lot. He said it shouldn't because that is not supposed to be a living space. The permit that was obtained for that structure back in 1988 was labeled garage/storage. The Board Member said that now there's a bathroom and a living space there, so it should be added to it. Attorney Leja said it should be counted towards the overall usage of the square footage on that property that is dedicated already to a residential use. But the problem is that you can't have a residential space and accessory structure for the same purpose on the same parcel. For our purposes, this parcel, while it is divided by a private road, according to the definitions in the code, is treated as a single parcel. If it was a public road splitting them, then it would be considered 2 parcels, but a private road according to the definitions would be counted as one parcel.

Mr. Eggleston stated that the Rosses also own a vacant lot on tax map 123.18-1-34, which is separated from 123.18-1-70 by a private road. There was discussion about merging the properties, which would take away some of the non-conformities; about building a home on parcel 123.18-1-34 which is a more compliant lot; or as an alternative to do something with the garage structure to remove it or substantially decrease it. Andy Leja advised the applicants to come back with an alternate plan for the Board to consider.

Mr. Eggleston stated they currently have 900 sq ft of living space. If they were to increase it by 25%, they would have 1,080 sq ft of living space. Kathy Taylor raised the fact that by tearing it down completely, it would have to meet the current zoning code requirement of 1100 sq ft for the house. Attorney Leja responded that the non-conforming use protection under the code does not apply to a complete tear down, rebuild. It's only for those structures that you are basically restoring 50% or less of the building. Then you're allowed an additional 25% under the non-conforming use protection. If you do a complete teardown, rebuild, you lose the non-conforming status and revert to the regular existing code.

Mr. Eggleston stated that they shouldn't be required to get a variance for the 25% increase because that doesn't apply, as they are tearing down and rebuilding. So that variance should be removed. Chairman Gabak reviewed the requested variances: front yard (lakeside) setback of 15ft where 50 is required; rear yard (roadside) setback of 13.9ft where 30 is required; north side yard setback of 6.9ft where 20 is required; south side yard setback of 10ft where 20 is required; greenspace of 58.3% where 75% is required and coverage of 38% where 25% is required. Also, they want to go from 790 sq ft to 1924 sq ft which is over a 250% increase, not even counting the building on the other side of the road.

Mr. Eggleston said the expansion of greater than 25% is not a variance they are subject to as they are not remodeling the existing cottage. Andy again reiterated that if they are doing a complete teardown, rebuild, then the 25% goes out the window and they are subject to the existing protocol. If

the proposal is not to restore the original existing home, then they need to recast their application as a brand new teardown, rebuild and show how they are going to conform. Mr. Eggleston said the 25% expansion does not apply to them. Andy said that there was discussion before about non-conforming use protections and the 25%. If Mr. Eggleston is saying that they don't care about non-conforming, they're going to do a teardown, rebuild, then the application has to be considered under the existing code as it currently stands with the substantial setback variances they are going to need and the undersized lot variance they are going to need.

Don Bowen then stated his position as Zoning Officer. He indicated that he met with the applicant and Mr. Eggleston to speak about the project and as he reads *Article 9-2, Alteration or Extension*, it states, "A use of land or structure which does not conform to the regulations of this Law shall not be altered, reconstructed . . ." In his opinion, the proposal was to reconstruct the house which means tear down the house and build a house, which is probably why in the report that he first generated, they were not going to comply with the 25%. As Mr. Bowen continues, "shall not be altered, reconstructed, extended or enlarged, except in accordance with the following provisions: Any increase in volume, area or extent of the nonconforming use shall not exceed an aggregate of more than twenty-five (25) percent during the life of the nonconformity." In his opinion, reconstruction means reconstruction of the home and the application as presented was more than 25% and that's why he wrote what he did.

Andy Leja indicated that that was an appropriate interpretation of what was contained in the code. Atty Leja indicated that the applicants are now stating that they want to do a complete teardown, rebuild and, as a result, they would like us to treat it as if it were a vacant lot and they are putting a brand new house on it. Eggleston concurred. However, Andy stated, the lot is still not conforming on a number of different levels: setbacks, acreage, etc., unless the applicant were to consider an alternative such as merging that rear lot.

Mr. Kick spoke on behalf of the Rosses. He has no problem with the 24' x 40' building on the lot. He also had an old run down camp that he rebuilt in the same area. Mr. Eggleston also submitted a letter from Steven Atkins, a neighbor, who indicated that he had no objections to the application.

Mr. Eggleston conferred with his clients and asked the Board if they could have an adjournment until next month to reconsider alternatives and bring those back to the Board. Chairman Gabak agreed. The public hearing will be kept open until then. There was also discussion about the requirement of a SEQR determination, which Andy will review.

Motion to adjourn made by Chairman Gabak , and seconded by Kathy Taylor. All in favor. Time was 6:54 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

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 15 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 two story dwelling with 3 bedrooms and 2 baths on a similar foot print but making it parallel with the side property lines. 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 remain at 15 FT to the deck. The road setback to the entry porch will be 13.9 FT. The coverage will be 38.0 % and green space 58.3 %. The volume of the new dwelling will be greater than 25 %. 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 1924 SF with 65 SF porch and 288 SF 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.

(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 3.1 %; from 34.9 % to 38.0 %. 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.