

Town of Lake Luzerne

Zoning Board of Appeals Minutes

February 9, 2023

After reciting the Pledge of Allegiance, the meeting was called to order at 7:04pm with the following members present: Chairman Matt Palitsch, James Moeller, Rayl Zubal, Burgess Ovitt, and alternate Michael Bordeau. Also present were Zoning Enforcement Officer Karen Putney, Deputy Enforcement Officer Kristopher Kassay, and Attorney Mary Kissane.

I. Public Hearing: Area variance 2022-AV7 for Michael LePage, parcel number 318.1-1-16, 7 Ralph Rd. for a Front Yard Setback relief

II. Review new application: Area variance 2023AV-1, Applicant Michael Goodhart, agent for owners Nancy Seid & Matthew Witten, parcel number 292.8-1-6, 528 Gailey Hill Rd. asking for Side Yard Setback relief

III. Approve minutes from ZBA meeting: January 2023

IV. New/Old Business

I. Public Hearing: Area variance 2022-AV7

Public hearing opened at 7:06pm for applicant Michael LePage parcel # 318.1-1-16, 7 Ralph Rd. for a 3.6' relief of Zoning Ordinance Article V Table A: Front Yard Setback.

ZEO Putney read the public notice, one reply was received by email in favor of the variance.

Chairman Palitsch asked for comments from the public in attendance, with no response.

Public Hearing closed at 7:09pm.

With the public hearing closed, Chairman Palitsch stated that when they reviewed the application at last month's meeting, it was requested by the ZBA that the applicants provide additional information to help better understand what was going on.

Mr. LePage provided documentation from the individual performing the excavation service showing that he had made an attempt to remove a large rock which was the barrier to placing the foundation in the originally proposed location.

The documentation consisted of a copy of both the front and back of a check, an invoice from Morgan Construction Services for the excavation and jack hammering, a sworn affidavit from Mr. Morgan, the excavator, specifying that he had to move the foundation location because of the ledge rock which he was unable to remove.

Chairman Palitsch and James Moeller both acknowledged the applicant provided all the documentation that was requested.

Date on the invoice is January 27, 2023, as is the due date, but the cancelled check is dated 9/19/2022.

Chairman Palitsch requested that the applicants respond at the podium.

Monica Alden stated she had misplaced the original invoice and received a new one from the contractor via email which she printed and provided to the ZBA and assured that the invoice is a duplicate.

Chairman Palitsch quoted the sworn affidavit, “no one questioned it when we had it inspected so we moved forward.”

Palitsch- Inspected by whom?

Alden- Warren County and the bank. Their response was they don't take out tape measurers when they inspect something.

Moeller- And the bank approved all this?

Alden- Yeah, they did as well.

Palitsch- The bank approved it after the second survey that was performed which was required?

Alden- Yeah, that's when we realized it was off, so I called the bank, they read through it, thought it was a minimal amount, and were ok with it.

Moeller- Part of the bank's request was for it to be plotted after construction.

Alden- Right, before and after.

Moeller- You brought this to the attention of the board on your own free will, correct?

Alden- Yes, Charles the inspector from Warren County stated that we should get in touch with Mrs. Putney, so we did that immediately.

With no further questions from the Board, Chairman Palitsch read through the application.

- SEQR exempt
- No County Impact
- APA not required

With no further questions, Chairman Palitsch made a motion to grant Area Variance 2022-AV7, Front Yard Setback at 71.4 feet with conditions that the front landing and stairs cannot be covered, seconded by Burgess Ovitt. All in favor: 5, Opposed: 0, carried.

II. Review new application: Area variance 2023AV-1

Asking for a 9.3' relief of Article V Table A: Side Yard Setback (Total of 30' required, 20.7' requested).

Before going through the application, Mr. Goodhart gave a summary of the proposed action to extend the side porch to the end of the building.

Purchased by current owners in 2007, porch and garage were added at that time.

The existing porch is 16 feet by 12 feet, proposed addition is 12 feet by 12 feet.

Examining the documentation, Chairman Palitsch asked if Mr. Goodhart was involved in the original construction of the porch.

Mr. Goodhart- Nope

Chairman Palitsch then questioned if the jog in the existing porch was designed to accommodate the side yard setback requirements.

Ovitt- Good call.

Moeller- More than likely.

Chairman Palitsch read through the application as submitted.

- SEQR exempt
- No County Impact
- APA decision in process

Zubal- Back in 2007 when the garage and porch were added, were the additions permitted?

Putney- Yes.

Zubal- Like Matt mentioned, is the jog in the porch to keep them within the limit.

Putney- That's what it looks like, they knew it was close.

Zubal- If the septic had to be replaced, it would be hard to get equipment down through there and neighbors might be ok with it now, but the property could be sold, and the next neighbor could put a fence through there and you would never get the equipment down there to fix the septic system.

Goodhart- You have 10 feet 3 inches on the other side, I don't know what it takes to get an excavator down there.

Zubal- I'm just looking at it for the next future homeowner so somebody doesn't buy something they can't work on.

Moeller- Is that the original septic?

Goodhart- Yes, it was pumped a couple of years ago.

Chairman Palitsch made a motion to accept the application for Area Variance 2023-AV1: Side Yard Setback at 71.4 feet as submitted, with conditions that the front landing and stairs cannot be covered, seconded by Rayl Zubal. All in favor: 5, Opposed: 0, carried.

Chairman Palitsch made a motion to set the Public Hearing date for March 9, 2023, at 7:05pm for Area Variance 2023-AV1, seconded by James Moeller. All in favor: 5, Opposed: 0, carried.

III. Approve minutes from ZBA meeting: January 12, 2023

James Moeller made a motion to accept the January 12, 2023 minutes as submitted, seconded by Michael Bordeau. All in favor: 5, Opposed: 0, carried.

New/Old Business

Chairman Palitsch spoke to the contractor working on Mr. Charland's property who stated he is looking to get a C.O. shortly, so that will not be an issue with regard to the time frame for the accessory structures that were placed on the property without a primary structure being built.

Chairman Palitsch attended the recent Town Advisory Committee meeting via Zoom and is concerned that the zoning changes proposed by the Town's 2023 Master Plan would be a major evolution to do what is proposed. He does not disagree with the proposal, but his concern is where the funding will come from to accomplish the proposed zoning changes in the new Town Plan, as this task will require a lot of work.

Chairman Palitsch received a list of zoning items from Annie McMahon that need to be worked on, but they are confounded by the changes proposed in the Town's new Master Plan and would like to take time to talk to Town Councilman Jim Niles as he is the point of contact for the Zoning Board of Appeals.

Items from the list mentioned were dumpsters, signs, livestock limitations, trailers and campers, and roof heights.

Mr. Moeller requested Mrs. McMahon's list be sent to members by email.

Moeller- Wasn't the Town Board working on the trailers and campers?

Putney- They did for a while, but it's gone to the wayside. The Planning Board made a suggestion to the Town Board to require a Special Use Permit because that would require a Public Hearing every time, and the members of that Board couldn't agree as to what they wanted so it didn't get passed. When attorney Mitchell came on board as the Town's attorney, he tried to implement a moratorium on them for a while so that we could try to come up with something to address them in the Zoning Ordinance and again the town board could not agree, and it got tabled and it's not ever been looked at again.

Moeller - But there's nothing we can do about that, is there?

Putney - Unless you want to change what is in the Zoning Ordinance right now which basically is that you can park and store an RV on a parcel, but it has to be in the side or rear yard which means in order to have a side or rear yard you have to have a building on a lot. So, any lot that has no building you can't have an RV on it and that's all that's in the Zoning Ordinance. That's as much as it has addressed.

Palitsch - You can't be on the waterfront because if you're on waterfront you don't have a backyard.

Putney - Correct, because when you are on the waterfront you have more than one front yard, it's considered a front yard, so you end up with no rear yard. I suppose they could park it on the sides of their house because they would have side yards, but it has never been addressed again. It's one of the things they talk about periodically, that it needs to be looked at and something done, but nothing has been done.

Palitsch- so the last time we the last time we recommended any changes that the Town was when Mark Mayhew was still Chairman, that was several years ago, we clarified some definitions. One of the things the Town Plan talks about is removing inconsistencies in our definitions, but I don't have any more definition of the concern than that.

Putney- Tracey Clothier came in and I gave her my list of issues that I have with the Zoning Ordinance that are a little bit contradictory that I have been keeping as I come across them hoping that someday we would revamp it or have a meeting to talk about it.

Palitsch- Email them to us.

Palitsch- Let me go over some of the things from the Town Plan on land use and zoning.

-Clear up the consistency and update with State and County laws

-Remove unnecessary obstacles in the zoning code to encourage the redevelopment of dilapidated and vacant properties

Palitsch- I'm not sure what that means, Karen?

Putney- I don't know either.

Zubal- That means make the laws more flexible so you can take an old building that should be torn down and fix it up kind of in a way that's what they're doing in Corinth right now.

Putney- What is in my Ordinance that is stopping that?

Ovitt- Those statements saying the Ordinance is hindering people from cleaning up, the stater of that statement would have to explain it.

-Protect residential areas from incompatible uses

Palitsch- I thought that's why we have zoning.

-Recommended actions include to draft short term rental regulations

Palitsch- I thought the Town had determined that they were not going to use zoning to regulate short-term rentals which is why they're going to have a short-term rental plan separate from zoning, but as Karen pointed out to me the current proposal has zoning currently since we don't have a short-term rental enforcement officer, Karen and Kris become the short-term rental zoning enforcement officers.

Putney- It's not part of the zoning ordinance, it's a separate local law.

-Adopt a town-wide smart growth policy for all projects and initiatives. Smart growth is a range of development conservation strategies that create livable, sustainable, resilient, and equitable communities.

Palitsch- I didn't know what that meant, so I went and looked up what smart growth communities are, and I still don't know what it has to do with zoning.

-Roof heights for accessory structures

Chairman Palitsch asked if anyone on the ZBA had a recommendation as to what they think it should be.

Bordeau- What is the APA height for accessory structures?

Putney- Its 40 feet for primary and I'm not sure if their definition of how to measure it is the same as ours, some towns have a different definition of how to measure a building height. For principal structures, APA is 40 feet and includes the chimney, but ours does not include the chimney and is 38 feet from lowest grade to highest peak. Accessory structures are not to exceed 18 feet or the height of the principal structure, whichever is less. That's where the problem with double-wide manufactured homes come in because a lot of times they're not even 18 feet high and people are wanting to put in garages with a with a double-wide manufactured home and they want that extra space for storage. They have to come to the ZBA every time for a variance for that, and that's why we've done so many of them.

Moeller- One of two things you need to do is go back and see what the average height has been that we granted, or look at a general two-car garage which is 24' by 24' where the wall will be 10' and the maximum can be a 12/12 pitch so it can't be more than 20' in height.

Putney- For the three plus years that I've been here I think that the purpose of keeping that height low was to discourage people from being able to turn garages into habitable space without anyone realizing that they were using them as habitable space. I think that's what the intent was, but I don't know that.

-Short Term Rentals

Ovitt- Somebody else is going to take care of that.

-Solar Panels

Putney- I think it was because there's nothing concrete in our zoning ordinance that deals with solar farms. We've never had a solar farm application come through. We've talked about it and when Jim Niles was the chairman, he did some research on it and determined that we would have to treat it as a public-private utility and go from there with it, but solar farms are not specifically addressed in our ordinance.

Palitsch- Is there a size limit? At what point are you called a solar farm? We have no regulation on that. Would a large-scale solar farm be a public utility?

Kissane- I don't know off the top of my head, but I can research that.

Palitsch- Well I wouldn't do anything right now.

-Cell Towers

Palitsch- We know where we stand.

Ovitt- Been through that one.

-Light manufacturing

Palitsch- Using PDDs to allow manufacturing where they are not currently allowed. I attended a zoning and planning conference in Saratoga and that was one of the things the presenter told us we should absolutely never do.

Zubal- They have a proposed map right there, if we could have the existing map right next to it like an overlay. They're saying this is what we propose, this is what we want to do, now show us what the existing is because these are all a bunch of proposed maps.

-Outdoor wood burners

Palitsch- We have regulations on outdoor wood burners that I think that question was more along the New York State ban or not a ban on outdoor wood burners.

Zubal- I think they should loosen them up.

Putney- Someone told me that they now are making some wood furnaces that pass that EPA requirement.

Chairman Palitsch asked at the Town Plan meeting where funding is coming from to update the Zoning Ordinance and maps, but the Town has applied for a grant and did not receive the grant. To go through the zoning map and every property that has multiple zones while considering APA requirements is a big chunk of work, and I know the two individuals who are responsible for Zoning Enforcement are not going to be able to do their jobs in addition.

Zubal- I think they should put this whole comprehensive plan on the ballot and let the people in town vote on it if we want to change.

Putney- They will be having a public hearing so you can bring that up there. They may set the date at the next Town Board meeting.

Kassay- A Zoom participant asked if it would make sense to align the Town zoning with APA regulations.

Palitsch- The comprehensive plan mentions in several different places making our zoning consistent with APA, so I asked that question during the meeting the other night, whether we're going to make all of the Town of Lake Luzerne compatible with APA zoning regulations including those parts of the town which are not in the APA jurisdiction, and I did not get a clear or positive response to that.

Putney- The problem with making them consistent with APA is as you stated, not all of Luzerne is in the Adirondack Park. The other issue is that we would have to look at the amount of acreage allowed per dwelling unit that the APA regulations are as opposed to what our current map is and see if the parcels that exist are anywhere near compatible. The biggest issue that we've come across so far are these parcels that have more than one zone. Any of the other parcels that exist, say you have a half-acre parcel and it should be an acre, they're grandfathered in so you can build on them if you can fit a house, a well, and a septic. All of that is required because where there is Town water, you don't have to have a well, so that's kind of grandfathered in under this ordinance as it is. Where the problem is coming up are these parcels that have more than one zone, and some of them are not big enough to even fit the requirement of that particular zone by itself. That's what we've been looking at. We have a few parcels that have three or four zones in them. I was told by former Town Attorney Crowe that the state actually frowns upon you having parcels with more than one zone, so that's why we

started looking at this to try to clean it up a bit, but the map is so crazy it's going to be quite an undertaking. Look at the zone down through East River Drive. There's a corridor of I think it's residential town and it's like a swath down through there, all the same width but then anything beyond that are different zones and so you've got all those parcels down through there that contain more than one zone in a lot of cases. I've got one up on Hall Hill Rd. that has three different zones, one of them is Wild Forest which indicates State Land and there's no State Land in that parcel, so I don't know how this came about. I have another one similar to that down near Call Street area that's like that as well, it's got a state land designation as part of the parcel and there's no State Land there either, so we've got to look at the map and clean it up one way or another.

Zubal- Or how it's going to affect property values like it's going to change when it changes the zoning on a piece of property. What it's going to do to the values?

Putney- I don't know, I would have to talk to Melissa about that and maybe get her involved in it but I'm not sure that the Assessor assesses based on the zone that you're in. That's a good point.

Zubal- What if a person owns a piece of commercial property and changes it to residential.

Putney- Well the problem with that is there's not enough commercial land in town either. That's one of the things that the old Comprehensive Plan tried to address, was to find more land in Town that we could turn to commercial use and that's one of the things that's never been looked at or done.

Moeller- A few years ago the Fourth Lake wanted to come in front of us and when it rezoned, all of a sudden they were like whoa, pump the brakes and they rescinded on everything.

Putney- Well some of that area in Fourth Lake is Hamlet Commercial and they were looking at specific parcels and wanting to change them all to Hamlet Residential. They brought that to the Planning Board and because of that Comprehensive Plan and the fact that there's not much commercial property in town now, they were balking at it and they also felt that by doing this they were spot zoning because it wasn't all of this area, it was specific lots, so they talked to them about it and Fourth Lake was supposed to come back with some more information and they ended up saying they weren't going to pursue it any further, they would pursue it legally somehow through Deeds or something on their own.

Zubal- The town is currently spending money on this comprehensive plan, it's not grant money, right?

Putney- That's correct.

Palitsch- I will get this current list out to you, I will email it. I will get together with Councilman Niles to get more specific information as far as what the Comprehensive Plan impact is on Zoning, and who's going to do what. Once I get that information, I will notify all of you as to what I've learned. Until we do that, I don't want anybody to be wasting our time trying to modify things that might change.

New/Old Business

Moeller- Is there anything coming down the pipeline that you would like to share with us?

Putney- We've got a few subdivisions coming down the road, one up in the Heights that they're looking at doing with about 17 lots. Over on Hidden Valley Road/Hall Hill area, with the property that Tom Reed owns they are working with APA on a 9 or 10 lot subdivision right now. It has not come to our Planning Board yet, he's working with APA because the amount of houses allowed per acre didn't match what our Zoning is, so he was advised to go to APA first and work with them to make sure of that rather than get it approved here, because ours is less than what APA is for the land that he's got. Ours is one house per acre, APA is one for 1.3 Acres, so he's working with them. They're asking questions now about roads and other things so they may be close to coming to the Planning Board to have that reviewed. There is Passarelli's property down here on Lake Avenue, they did a two lot subdivision, divided out the house and the barn from the main portion of that parcel and they're looking to put in a subdivision on the remaining part that is vacant. I don't know how many parcels they're looking at because they've been talking about how many lots they could have and so they're talking about doing something. There is Evergreen Estates, a subdivision back in 2009 over on Call Street which wasn't approved, they're making some revisions to that, so that looks like that might be going in hopefully soon. They've got quite a bit of ahead of them because their time frame for approval with DOH and DEC has expired, so they've got to go back to them and get reapproval. Those are the big items in town.

Chairman Palitsch made a motion to adjourn at 8:21pm, seconded by Rayl Zubal.

All voted in favor of adjournment.

Respectfully submitted,

Kristopher Kassay