

Town of Lake Luzerne

Zoning Board of Appeals Minutes

July 13, 2023

After reciting the pledge of allegiance, Chairman Matthew Palitsch called the Zoning Board of Appeals meeting to order at 7:00pm with the following present: James Moeller, Annie McMahon, Rayl Zubal, Michael Bordeau, Zoning Enforcement Officer Karen Putney, Deputy Zoning Enforcement Officer Kristopher Kassay, and Town Attorney Mary Kissane. Also present: Applicants Ed Bus and Christina Fonda. Lisa Williams, and Chris Gomoka, agent for owner Lisa Williams were attending virtually via Zoom.

Chairman Palitsch opened the Public Hearing at 7:10pm with the following items on the agenda.

- I. Public Hearing: Area Variance 2023AV-3
Parcel number: 286.12-1-9
Location: 1369 Lake Ave, Residential Resort (RE) zone, 1.80 acres
Owner/Applicant: Edward Bus
- II. New Application: Area Variance 2023AV-4
Parcel number: 292.8-1-2
Location: 753 Lake Ave, Hamlet Residential (HR) zone, 0.43 acres
Owner/Applicant: Christina Fonda
- III. Discussion on Area Variance 2022AV-4
Parcel number: 285.-2-12
Location: 349 Gailey Hill Road, Residential Rural (RU) Zone, 1.29 Acres
Owner/Applicant: Lisa Williams, represented by Agent Chris Gomoka
- IV. Accept minutes: June 8, 2023
- V. Old/new business

I. Public Hearing: Area Variance 2023AV-3

-Requested relief of side-yard setback requirements for a storage structure replacing a weathered 8- foot-wide by 26-foot-long snowmobile trailer that has been used for storage of maintenance equipment for 18 years with a 14-foot-wide by 24-foot-long shed on skids.

-No letters, emails, or comments received from the public, but one letter was returned as “return to sender vacant unable to forward.”

Chairman Palitsch closed the Public Hearing at 7:11 pm.

-Previous submittal included a survey which inaccurately depicted the location of proposed structure.

-Survey indicated that the property line is along the tree line and if the proposed structure were to be placed 11 feet from the property line it would leave approximately 13 feet of width for equipment access to the yard which can only be accessed with heavy machinery through this opening due to existing improvements and obstacles.

-SEQR exempt, County referral reflected No County Impact, APA Non-Jurisdictional Letter received and is on file.

-Applicant's property extends across Perry Road to the shore of Lake Vanare, but shoreline setback restrictions prohibit desired structure placement.

Chairman Palitsch read through the Variance Standards section of the application.

-All variance standards questions were read through with all Zoning Board members acknowledging the questions as answered with an exception to question 3, which asks whether the requested variance is substantial. The response is "I need storage capability and room to get between motel and proposed shed for equipment if needed to do work on septic. I don't feel 5' is substantial but I need the additional clearance to get heavy equipment in if septic needs work. Close turning radius due to motel, shed, and back tree line (9N)." All members disagreed with the applicants' answer contending that the ask is substantial.

James Moeller made a motion to approve Area Variance application 2023AV-3 as submitted, seconded by Matthew Palitsch. All in favor: 5, Opposed: 0, carried.

II. New Application: Area Variance 2023AV-4

-Applicant requesting Area Variance for lot size requirement to have two dwellings on a substandard lot.

-SEQR exempt, County referral reflected No County Impact, APA application submitted and in process, no response has been received.

-Previous owner acquired permit for garage that includes a kitchen and half-bathroom for Home Occupation use as a computer repair shop.

-New owner would like to add a shower, converting garage into dwelling for short-term or long-term rental use.

-Lake Luzerne Zoning Dimensional Table requires 20,000 square feet per dwelling, applicants' lot is 18,730.8 square feet.

-Variance standards questions were read through with all Zoning Board members acknowledging the questions as answered.

Matthew Palitsch made a motion to accept Area Variance application 2023AV-4 as

complete, seconded by Rayl Zupal. All in favor: 5, Opposed: 0, carried.

2

III. Discussion on Area Variance 2022AV-4

Continuation of Public Hearing for Area Variance 2022AV-4.

Height drawings of the principal structure and accessory building have been submitted to the Zoning Board of Appeals, confirming actual variance request.

Putney- The cover sheet was written when I used the measurements that Jamie and I had gotten when we went up and measured to the underside of the eave at the peak, You requested them to get the drawings done by an architect for the actual height to the top of the ridge and the drawings that are provided are by the engineer with the actual height, so the drawings are the correct, 13 feet 9 inches instead of 12 feet 9 inches.

McMahon- That's going to change the variance request (from 5 feet to 4 feet). APA Non-Jurisdictional Letter has been received and is on file.

Members of the Zoning Board of Appeals had no additional questions for the applicant about the application as submitted.

Chairman Palitsch read through Part 1 of the Short Environmental Assessment Form as submitted by applicant, establishing the Lake Luzerne Zoning Board of Appeals as Lead Agency in the application review process.

Total acreage of 1.5 acres is the measurement after lots were combined.

Chairman Palitsch disputed the answer to question 4 on the Short Environmental Assessment Form.

-Applicant agreed that the Rural (non-agriculture) box should be checked in addition to Residential (suburban).

Gomoka- No water supply has been established to the storage structure.

With no further questions from the Zoning Board of Appeals members, Chairman Palitsch read through Part 2 of the Short Environmental Assessment Form as submitted by applicant.

Question 1- Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? No, or small impact may occur as it does not comply with Town Zoning Regulations.

Question 2- Will the proposed action result in a change in the use or intensity of use of land?

No, or small impact may occur.

Question 3- Will the proposed action impair the character or quality of the existing community? Moderate to large impact may occur.

3

Question 4- Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area? No, or small impact may occur.

Question 5- Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walking? No, or small impact may occur.

Question 6- Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? No, or small impact may occur.

Question 7- Will the proposed action impact existing:

a. Public/private water supplies? No, or small impact may occur.

b. Public/private wastewater treatment facilities? No, or small impact may occur.

Question 8- Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? No, or small impact may occur.

Question 9- Will the proposed action result in an adverse change to natural resources? No, or small impact may occur.

Question 10- Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? No, or small impact may occur.

Responding to Chairman Palitsch stating that he doesn't know the answer because the building is already there and he is not sure what was there previously, Mr. Gomoka interjected commenting that a dilapidated two-story trailer with a height of 22 feet, approximately 28 by 96 and set back 55 feet from the road existed prior to the current structure and the area was not wooded but a fully cleared lot.

Palitsch- I have seen pictures of that lot at the time that you purchased it, there was a driveway cut, the lot was wooded.

Gomoka- The lot was not wooded, never was wooded, no trees have been removed at that

location. I'll give you an affidavit from the contractor that removed the home. There was one maple tree in the side yard that was removed, that's it. It was not wooded, that's an incorrect statement.

Palitsch- I would like that affidavit.

Gomoka- That's fine. The only thing they removed was bushes from the front of the building, they removed no trees.

Williams- I can confirm anything growing on that property, there's a maple tree and then a wild grapevine that had climbed up a tree at the rear of the property between my parents' property which is the original lot that I own now and the property next door. There were no trees removed other

4

than that one maple tree and the wild grapes that were growing up a tree on the side. It was overgrown but it was not forested.

Palitsch- Since you offered, yes, I would like an affidavit from your contractors stating that no trees were removed from that property.

Question 11- Will the proposed action create a hazard to environmental resources or human health? No, or small impact may occur.

Zoning Officer Putney read to the Board the introductory statement from Short Environmental Assessment Form Part 3, acknowledging that question 3 from Part 2 requires an explanation as to why a particular element of the proposed action may or will not result in a significant adverse environmental impact.

Palitsch- Nothing was done by the applicant to minimize the impact on the community. The applicant did not get or submit a Land Use Application. The applicant did not obtain a building permit. It is the Board's opinion that it is out of character with the neighborhood and the Board feels the long-term cumulative impacts are hard to assess due to these circumstances.

Mr. Gomoka interjected three times while Chairman Palitsch was answering Part 3, stating the same building was constructed down the street which houses a dump truck business and was subsequently muted at the request of the Board.

All members of the Board agreed that the existing structure is out of character for the neighborhood. Mrs. Williams requested that the record state that her attorney was muted by the Board.

Palitsch- I'm looking at a picture that shows a grassy area and I see a building which is covered by crushed stone. The drainage is completely different, I don't know if the ground around that is still pervious. It's not impervious, but I think there are some definite and fundamental changes which have been made. As to what the long-term impacts are, I don't know.

McMahon- How old is this picture?

Palitsch- This is August 14th, 2014.

McMahon- When did they purchase the property?

Palitsch- In 2018.

McMahon- When they purchased it there could have been a difference to it, or maybe that work was done at that time?

Palitsch- Not that I can find.

McMahon- We don't know, we have to go with what we see.

Moeller- That's why we need that affidavit that says nothing was cut.

Kassay- The big spruce tree that was there in 2018 is not there in imagery from 2022.

5

Williams- The spruce tree was on the other lot, it was not on the property that you are referring to. The spruce tree was removed to put the house on the other lot. The spruce tree was not on this property because it was right outside the bedroom window in the old trailer, and I note it again for the record that my attorney has been muted and is not participating in these proceedings.

Palitsch- Council says that he can speak after, but your Council does not get to interrupt me. Williams- Noted.

Palitsch- Do they get a chance to respond to a SEQR?

Kissane- What they say doesn't need to be taken into account in your decision, but if you would like to, give them an opportunity to be heard.

Palitsch- I am more than willing to give Mr. Gomoka the opportunity to be heard on the SEQR.

Gomoka- I have nothing further on the SEQR other than there's another garage down the street that matches the size and height of the existing building.

Kissane- Just for the record we gave you a chance to respond and that was your response. Gomoka- That's my response, and my objection is noted.

Chairman Palitsch made a motion that this application will not result in any significant adverse environmental impacts regarding the SEQR, resulting in a Negative Declaration. Seconded by Annie McMahon. All in favor: 5, Opposed: 0, carried.

No additional comments have been received or contributed by the audience. **Chairman Palitsch closed the Public Hearing at 8:10 pm.**

Palitsch- I am accepting the fact that the information on the first part of the application is correct. I'd like to move to the second page, a brief history of the property. History of the property's prior building was a two-story 71-foot wide by 25-foot deep, 19-foot-tall dwelling with enclosed porch encroaching in front yard, as well as a 15 by 20 non-conforming two-story deck all of which were in compliance with zoning at the time. I'd like to delve a little deeper into the history of the property, Mrs. Williams please feel free to correct me. The property was purchased in 2018, both 341 and 349. Each site had a manufactured home. In 2019, both manufactured homes were demolished with appropriate permits. In 2020, a double wide manufactured home was installed on 349 with permits. In 2021, a 56 foot by 32 foot by 19-foot nine-inch high three-bay garage was constructed without Town or County permits. In 2021, you received a notice of apparent violation on December 3rd for a 12 by 26 storage building on 349, and a three-bay garage structure on 341, which was an accessory structure without principal building and exceeded the height requirements. In 2022, you joined both parcels on 341 and 349 to correct the accessory building but without a primary building a height violation remains, is that correct?

Williams- The property was purchased in 2012, the house was placed on it in 2019. The original parcel at 349 was purchased in 2012 from my parents, and 341 was the parcel that was purchased after. The second parcel was purchased after, I believe in 2018 or 2019, I don't remember, they were both demolished in 2019.

Palitsch- They were both demolished with both County and Town permits?

6

Williams- Yes.

Palitsch- The double-wide was installed in 2020 with both Town and County permits? Williams- In 2019.

Putney- The C.O. for the demo was issued May 28, 2019, by the County, the demo on the other one was completed May 28, 2019, and the completion of the new double wide was October 3rd, 2019.

Zubal- So that's five permit processes in a matter of two or three years.

Moeller- What about a septic permit?

Williams- Septic was upgraded from a cesspool to be in compliance in 2015 with a permit. Palitsch- So at least four actions with a permit.

Zubal- I don't know how you can go through that many permits on this kind of stuff and then think you can just put a garage up of that size without a permit.

Palitsch- Was it the same contractor for the demolitions and the constructions of all the structures? Williams- Yes

Palitsch- Your contractor knew to get permits for the demolition and the construction of the double wide but not to get a permit for the storage structure?

Williams- I can't speak to what my contractor's intentions were, he's not present. Zupal- So you are not aware of the permitting process?

Williams- I wouldn't know, everything was done.

Gomoka- Yes, it was contracted third-party.

Moeller- Who was the agent?

Putney- Lisa Williams didn't fill in the designated part but signed the authorization form for the demolition of the home, site work, and concrete construction and Golden Paws was the applicant on the application.

Palitsch- So there is no documentation of a designated agent?

Putney- She has signed an agent form, it was not filled in who the agent was, but the permit was gotten by Golden Paws Excavating

Palitsch- Going into the questions on the variance standards:

1. Describe how the requested variants will not alter the character of the larger neighborhood or impact adjacent properties. The response is "Current structure will join two lots and create a storage structure that is smaller in size and scope to the previously existing dilapidated two-story structure that existed."

7

Palitsch- The current structure did not join the two lots, the two lots were joined by going to the Planning Board, and joining the two lots such that there was a principal structure on the lot and the accessory structure was no longer in violation. So, the construction of the storage structure has nothing to do with joining the two lots. This large metal structure is inconsistent with the neighborhood. To me, the variance alters the character of the neighborhood, it impacts adjacent properties, and we have statements from adjacent property owners pro and con for that. (Note: the combining of two lots is not a Planning Board action. It only requires a drawing up of a new deed to combine the two lots into one, and the new deed being recorded at the County level)

Moeller- I'm in agreement that this structure does not fit into the community there whatsoever and I can't read their mind on why they did it right out of the gate, but it just does not fit with the rest of the community up there because it's a metal structured rectangular box in a residential area with wood constructed buildings around it.

Gomoka- What does the construction have to do with regard to the character? There's a garage the same size down the street. It's not an architecture review process, it's a construction process.

Palitsch- Mr. Gomoka there's no public comment at this point in the procedure.

McMahon- It does alter the characteristics of the neighborhood, so it has an impact.

Zupal- I believe it's an impact, it's completely different looking than what was there. Different

location, different orientation.

Bordeau- I believe it has an impact.

2. Describe what alternatives have been explored to achieve a solution other than the variance. The response is “Attempted to maintain the prior 71 by 25-foot building as a storage building, however it became structurally unstable and had to be demolished.”

Palitsch- The previous structure was a trailer, in no way shape manner or form resembled the structure which was constructed. I don't know what the storage consideration was going to be for the existing structure. I failed to see how it meets the requirements or the structure that replaced it. The structure was demolished very shortly after its purchase and the new building was constructed. I don't see that any alternatives were considered or that any alternatives were shown on the application.

Moeller- It's very vague. Like you said it doesn't really show it and who deemed it on structure? Is there an affidavit saying that an engineer came in and it was structurally compromised and couldn't be reused? Besides that, it was a family dwelling not a storage unit, which was torn down to become a storage unit.

McMahon- It's definitely out of order. I do agree with Jamie, it's not replacing the residence, it is a definitely a storage structure.

Zubal- I agree with them, it looks like a storage structure, it's not a

residence. Bordeaux- I agree with everybody, it looks like a storage structure.

8

3. Explain whether this variance is substantial. The response is “No, the current structure is smaller in size and scope to what was previously approved and existed on site.”

Palitsch- Yes that is correct, the previous structure was approved and existed on the site. It is a substantial variation. The maximum height is the height of the new double wide which is 13-foot 9-inches versus the storage structure which is 17-foot 9-inches, so ballpark 40 percent. I consider 40 percent to be a pretty substantial deviation.

Moeller- Yeah just looking at the height, the difference of the height is approximately 40 percent and I believe that is substantial.

McMahon- Substantial.

Zubal- I believe the percentage is substantial.

Bordeau- The difference in the height is substantial.

4. Describe how the variance will not have an adverse impact on physical & environmental conditions in the neighborhood. The response is “It will not, it actually reduces the density of

lot”.

Palitsch- It has aesthetic impacts, but I don't think it has adverse physical and environmental impacts.

Moeller- I agree for physical environmental there really doesn't present any kind of an impact. McMahon- I agree.

Zubal- Minimal impact to physical or environmental.

Bordeau- I agree.

5. Describe how the requested variance is not a self-created difficulty. The response is “Attempted to salvage the existing large building as purchased.”

Palitsch- I don't know how you salvage a trailer and turn it into a large storage facility, the building was constructed without permits and is absolutely a self-created difficulty.

Moeller- I agree there's no permitting, there was just nothing, it was just blatantly done so I assume it's a totally self-created difficulty.

McMahon- Self-created.

Zubal- Yes, it's definitely self-created.

Bordeau- Yes, it's self-created.

Moeller- Would like the affidavit before making a decision.

9

Kissane- Now that the public hearing is closed, you have 62 days to make your decision whether they present that to you or not.

Chairman Palitsch made a motion to table action on Area Variance 2022AV-4 until the next meeting, seconded by James Moeller. All in favor: 5, Opposed: 0, carried.

IV. Accept Minutes

Rayl Zubal made a motion to approve minutes from June 8, 2023, seconded by Matthew Palitsch. All in favor: 5, Opposed: 0, carried.

V. Old/New Business

Chairman Palitsch acknowledged that Annie McMahon will soon be a member of the Town Board and requested recommendations if anyone knows someone who would be a valuable

asset to the Zoning Board of Appeals.

Zoning Officer Putney reminded Board members of a training opportunity in Lake Placid on October 12, 2023.

Chairman Palitsch made a motion to adjourn the meeting at 8:45pm, seconded by Michael Bordeau. All voted in favor of adjournment.

Respectfully submitted,
Kristopher Kassay