

# *Administrative Review Findings & Decision*

ZONING BOARD OF APPEALS, MIDDLESEX, NY

**Hearing Date:** 8/20 and 8/27/09    **File #:** #071509-AR

**Applicant:** Mr. Dan O'Brien, 1163 South Lake Road, Middlesex, New York 14507

**Order/Requirement/Interpretation/Decision/Determination appealed:** It was to be determined by vote of the Zoning Board of Appeals of the Town of Middlesex that the side yard required minimum setback should be measured from the outermost point of a structure for determining what is allowed within the 15 ft. side yard setback in the Lake Residential District of the Town of Middlesex. Applicant appealed the Zoning Officer's interpretation that "eaves and chimneys are an extension of the structure wall and attached to the structure", so the measurement should commence with this outermost point of reference and not at the foundation wall at ground level.

## **FACTORS CONSIDERED**

**Evidence considered by the ZBA in making its determination (such as testimony, written documentation, review of file):** The following evidence was heard by the Zoning Board of Appeals:

A review of the original file; The Town of Middlesex Zoning Law; testimonies from the following people:

Dawn Kane, Zoning Officer; Mr. And Mrs. Donald O'Brien; Mr. Alan Knauf as representing lawyer for Mr. O'Brien; Architect, Mr. Tim Tyskiewicz; Town Attorney, Elaine Espenscheid; and members of the Town of Middlesex Planning Board, Mr. Marty DeVinney and Mr. Bruce St. Lawrence who were involved in the process of the Site Plan Review of Mr. O'Brien's property in which the reference was raised.

**Whether the evidence presented supports the Zoning Officer's decision:**    Yes X    No    

**Reasons:** A motion to uphold the Zoning Officer's determination was made by Zoning Board Member, Mr. Richard DeMallie and seconded by Arthur Radin. The following reasons given: 1. Art. II, Sect. 200.101 defines specifically what a "structure" is and includes in its' definition anything "attached" to the main structure as included in the definition. 2. Art. II, Sect. 200.117 defines "Front Yard as an "open space" within

which there will be no extensions of building parts except certain examples of which “eaves” was included.

3. Art. II, Sect. 200.119 defines “Side Yard” as specifically an “open unobstructed space between the principle building and the side lot line, extending from the front yard line to the rear yard line. Determination included logic that the Town Board adopted the Town’s Zoning Law to specifically allow us to build into the Front Yard Setback, but not into the Side or Rear Yard Setbacks. The motion made by Mr. DeMallie is based on these definitions and the paragraphs mentioned above.

**Whether the Zoning Law supports the decision of the Zoning Officer :** Yes  No

**Zoning Law provisions relied on:** Zoning Law of the Town of Middlesex: Art. IV, Sect. #403, Schedule II for Lake Residential (LR) Minimum Side Yard Area Coverage Requirements; and the following definitions: Art. II, Sect. 200.101. Structure; Art. II, Sect. 200.117.Yard, Front; Art. II, Sect. 200.119. Yard, Side.

**Other relevant land use law or regulations relied on:** N/A **Reasons:** N/A

**Whether the decision of the Zoning Officer was correct:** Yes  No

**Reasons:** A correct interpretation of the Town’s Zoning Law as specifically written was delivered .

**DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:**

**The Order/Requirement/Interpretation/Decision/ Determination of the Zoning Officer is:**

Affirmed  Reversed  Modified

**RECORD OF VOTE**

	MEMBER NAMES	AYE	NAY
Chair	<u>Arthur Radin, chair</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Don Burkard</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Elizabeth Grant</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Richard DeMallie</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Benjamin Dunton</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Member	<u>Edward Carman (alternate)</u>	<input type="checkbox"/>	<input type="checkbox"/>

Arthur Radin, 8/30/2009  
Chairperson, Zoning Board of Appeals Date