

USE VARIANCE FINDINGS & DECISION

MIDDLESEX ZONING BOARD OF APPEALS on 10/15/09

Applicant: Mr. Jon Schick, representing agent for Mr. Ray Mahar, owner

Variance No: # 081409-Z

Address: 53 Aberthaw Road, Rochester, NY 14610

Zoning District: Lake Residential

Telephone: (585) 330-1820

Published Notice on: 10/11/09

Property Location: 968 South Lake Road, Middlesex, NY 14507

Notice to County sent: _____

Applicable Section of Town Zoning Code: Section #402, Schedule II, #7

Hearing held on: _____

Permitted Uses of Property: Single – family residence permitted only in this Zoning District. This property is pre-existing and Non-conforming . It is “grand-fathered” as one parcel with principle dwelling and a guest-house.

Use for which variance is requested: A “Use Variance” is requested to allow the owner provision for a renovation upgrade to current structures “grand-fathered” in on a pre-existing and non-conforming parcel of land. The proposed renovations will increase the footprints to both the “guest house” and the main dwelling to accommodate their family’s’ growing needs. The request asks for relief from being penalized for continuing to use the property in the same manner it has been used and is currently being used. Because the property is pre-existing and non-conforming, Section 302.0 of the Zoning Law does not permit this, however the existing “use” will not be changed. It will have the same number of bedrooms; it will continue to be a single property, not able to be subdivided. The new construction on property would include new docks, new septic design to replace and upgrade current one. It is the intent of this request to define the guest house as an “accessory building” using current zoning definition because it does not meet minimum square footage requirements for living space even with proposed renovations. An accessory building is allowed as a permitted “use” in the Lake Residential Zoning District.

No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following 4 tests must be met for each and every use allowed by zoning on the property, including uses allowed by a special use permit.

1. The Applicant cannot realize a reasonable return or benefit from the property in question, which must be established by competent financial evidence. The lack of return must be substantial. Yes___ No X

Proof: There is no proof that the applicant could ever realize a reasonable return or benefit from the property in question. There is no derived income coming from the property as it is proposed to be used, nor has there been while the present owner has owned and used it.

- ILLUSTRATIONS OF FINANCIAL EVIDENCE**
- Bill of sale for the property, present value of property, expenses for maintenance
 - Leases, rental agreements
 - Tax bills
 - Conversion costs (for a permitted use)
 - Realtor’s statement of inability to rent or sell

2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the zoning district or neighborhood.): Yes X No___

Proof: Yes, it does apply to the South Lake Road LR Zoning District as it apparent when looking to the southern neighboring properties, which also have “guest houses” per se next to the primary dwelling. The hardship is a self-created one by owner-ship. It was purchased as such.

- ILLUSTRATIONS OF UNIQUENESS**
- Topographic or physical features preventing the development of a permitted use
 - Why would it be possible to construct the applicant’s proposal and not any of the permitted uses?
 - Board member observation of the property and the surrounding area.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood: Yes X No___

Proof: If this Use Variance was granted it would alter the use of the Zoning District making a huge impact as it would

allow the parcel to be used for multiple dwellings. The character of the neighborhood would become denser in a District that is already very dense. Others would want approval for the same use, which is not permitted.

ILLUSTRATIVE NEIGHBORHOOD CHARACTER FACTORS

- Board members' observations of neighborhood.
- Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, and traffic.

4. The alleged hardship has been self-created. : Yes X No ___

Proof: I believe the alleged hardship was definitely self-created. The property is pre-existing and non-conforming in its present use. It was purchased this way and to increase the footprint of both structures would only make it more non-conforming. Renovations can be made within the existing footprint. As it is, the current properties "use" is not permitted in this Zoning District.

SELF-CREATED

- What were the permitted uses at the time the property was purchased by the applicant?
- Were substantial sums spent on remodeling for a use not permitted by zoning?
- Was the property received through inheritance, court order, or divorce?

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after reviewing and considering all four proofs, in a motion made by Ted Carman, and seconded by Donald Burkard, finds that:

The applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes and therefore the variance is denied.

the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA grants a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

