

Town of Middlesex / Zoning Board of Appeals Public Hearing

Minutes January 6, 2022

Zoning Board of Appeals Members: Chair – Rebecca Parshall; Board Members present: Ted Carman, Elizabeth Grant, Richard DeMallie, Win Harper (alt)

Others present: Attorney Rob Brenner, Esq., Dawn Kane, CEO

Public Present: Gordon Stringer, Austin Littiard, Town Board member, Lynn and Dick Lersch, Peter Gorman

Public Hearing was called to order at 6:57 p.m.

Chairman Parshall was in attendance and opened the public meeting by a zoom link. All members were present. Reminder that our Decision needs to be made within 62 days after the hearing is closed if a decision is made tonight, appeals under article 78 need to be made with 30 days after a ZBA decision.

1. Application #121521-ZBA
Applicant: Lynn B. Lersch
Property located at 890 South Lake Road, Middlesex NY 14507
Tax ID # 11.82-1-11 (LR)

CEO Kane announced that there were two applications. She stated that applicant currently has an existing generator that sits on a side structure near their barn, the application is to replace that with a new generator. The applicant was present at the meeting.

Owner Lynn Lersch distributed a letter of support from her neighbor to north, Todd Fess, which is the side of the property that is closest to the project. She states that the existing generator was not in compliance with code and that they are replacing and upgrading with a new generator. The hookups, meter service, transfer switch is already there from the old generator. She also states that the new generator will essentially be in the same location just slightly to east outside of the shed. This is important for the property because they have their water coming from the lake and it pumps the water through the faucets, without electric their water could freeze. Also applying for a 6.3' variance on north side and 43.75' variance to the east to the center line of the road, front setback, and side setback.

CEO Kane stated she was contacted by the neighbor to north, they have a similar situation with their generator, it will be dueling generators in the same location and that they are in support of the project.

Board Member Carman inquired about the existing generator stating that it is non-compliant and is being replaced with one that is compliant and placing it as close to the service box. He also asked if this was part of original permit plan when the renovations were done on the house.

Owner Lersch confirmed this was correct.

Board Member Grant inquired what was being changed and if it was going to be located in the same spot.

Owner Lersch stated that this is a different generator replacing the other generator which wasn't compliant as it is supposed to be located outside. So, they are moving the new generator outside approximately a foot or two away from the shed.

Board Member Harper stated that the generator is 6.3' from the property line and there is 2' from the existing shed.

Owner Lersch stated that it is only supposed to be 18” from a structure unless it has a window or door which in that case it has to be 5’ away. There is no window or door on that side of the building. They are moving it out to 24’ which was recommended so a worker could get in behind for maintenance.

Board Member Harper stated that the generator is about 3” or 4” further north from the shed. It appeared as though there was a 3- or 4-inch difference between the existing nonconformity and where the applicant wants to place the generator at the northern edge of shed.

Owner Lersch stated that they were advised to have room for debris and maintenance if anybody needed to work on the generator.

Board Member DeMallie stated that the variances being requested are 15’ minus 6.3 and 60’ minus 43.75. He confirmed that the vote will be on an 8.7’ from the side and 16.25’ from the center of the road.

Chair Parshall invited public comment. There were no public comments, therefore Chair Parshall closed the public comment portion of the meeting.

Member DeMallie offered to make a motion to grant the setback on the center of the road and instead of 60’ to be 16.25’ because of the variance and from the north boundary line 8.7’ instead of 15’. The variance criteria are as follows:

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created: No

Reason(s): The new generator will be not visible from anyone passing by.
2. Whether the benefit requested by the applicant could be achieved by some method, feasible for the applicant to pursue, other than a variance: No

Reason(s): All connections are available at the position requested.
3. Whether the requested variance is substantial: No

Reason(s): The two variances are not substantial because they are consistent with existing setbacks on the site of other preexisting structures on site.
4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district: No

Reason(s): The relocation of the generator from inside the shed to outside the shed is not going to have an adverse effect impact on physical or environmental conditions in the neighborhood. Rain will hit the generator where it didn’t before but the water and snow will melt off it and run down towards the house and be absorbed by the ground before it hits the lake so there is no adverse effect. The Generator won’t be blocking current flow of water.
5. Whether the alleged difficulty was self-created: No

Reason(s): The project is being done to comply with current codes.

Member Grant offered a second to the motions on the floor.

After careful review of the findings for criteria of an Area Variance, the board members stated variance request (#121521) the benefit to the Applicant DOES outweigh the detriment to the character, health safety and welfare of the neighborhood and therefore the variance request is granted:

Roll Call Vote:

Rebecca Parshall, Chair:	aye	Elizabeth Grant:	aye
Ted Carman:	aye	Richard DeMallie	aye
Win Harper (alt)	aye		

The motion so carried. After complete review of the file and the testimony given at the Public Hearing, and after due deliberation, the findings of fact were noted and referenced in the Findings and Decision form.

2. Application #121621-ZBA

Applicant: Diana Rainaldi, represented by Peter Gorman of Marathon Engineering
Property located at 662 Fisher Road, Rushville NY 14544
Tax ID # 11.50-1-11 (LR)

CEO Kane summarized the application stating that this is an application to make a property compliant for a property owner who is dealing with some mobility issues. The project is necessary so that he can access his property with a scooter. This application was reviewed by the Planning Board at its January 5, 2022. A final decision was not made as the project requires three variances from the Zoning Board of Appeals. They voted to approve conditions on the three variances being granted as proposed.

Peter Gorman stated that Mr. Rainaldi couldn't be in attendance as he suffers from multiple-sclerosis and has mobility issues. The applicant is a long-time local resident. He purchased a mobility scooter to help him get around. This project is going to give him access to different levels of his patios and access down to the lake. They are constructing a sidewalk and two elevator lifts. The sidewalk from the driveway to the front main entrance of the house will be flush with main entrance for easier access to the original level. The second branch of the sidewalk will go in front of the house along the south leading to the entrance of the first elevator lift that comes out to the patio. There is another entrance to the 2nd lift which drops down to the lake level (approximately a 7' drop). Other methods for access were explored, such as a tram, which was more invasive to the property, so it was decided to install the lifts. The project requires three variances; one is for the lower lift (25' away from the high water where 40' is required); the second variance is for the upper lift (4' from prop line where 15' is required); the third variance is for a garden wall in the landing area (7' from the property line where 15' is required).

Member Harper inquired about the first photo provided from Peter Gorman.

Peter Gorman explained that the picture shows the driveway entrance.

CEO Kane stated that there is a concrete apron.

Member Harper inquired if there were any changes to the sidewalk to the north.

Peter Gorman stated that there is an existing sidewalk that will be removed as there are two sets of stairs.

Member Harper inquired if this sidewalk was in the same location.

Peter Gorman stated it is a bit north, closer to the property line so Mr. Rainaldi can have access from the parking area

Member Carman inquired if the North side garden wall was going to be added and was that to enable the slope grade up closer to the door level grade.

Peter Gorman stated that raising the grade up so it is flush will allow Mr. Rainaldi to turn his scooter around.

Member Carman inquired if the new garden wall on the north side will retain soil to bring it up to level. At the Planning Board meeting a 30" wall was discussed.

Peter Gorman stated that the maximum height is 30 feet.

Member Carman inquired on the south side walkway where it swings around there is a row of trees, 5 trees or so that have high roots in the ground. He inquired on the plans for those trees since they provide a buffer between the Rainaldi's and the neighbor to the south. He asked if the project would disturb those trees since the roots were exposed above the surface.

Peter Gorman stated that the project is located a ways from there and there should be fairly minimal disturbance.

Member Carman inquired if the trees don't make it would there be an intent to replace them.

Peter Gorman stated that Mr. Rainaldi should be willing to replace them he has a good relationship with his neighbors and has received letters of support from them.

Member Harper inquired if changing the walkway to North was one variance, the one going down the side of the house to the South to the stone wall and the lift are all within the preexisting non-conforming variances.

Peter Gorman stated they are just taking a layer off the top of the wall to make the right height. No changes to the wall itself and the lift will be placed behind that wall. It will be basically in the same footprint. They are removing the set of stairs that comes down from upper patio and the lower lift will be located where the bottom of those stairs was.

Member Harper inquired if the other lift closer to the water was going to be back further from the water.

Peter Gorman stated that the lift will be a little bit further behind where the existing stairs are so it will be more in compliance than what it is now.

Member Harper inquired if the only place making it less non-confirming than it is now the two sidewalks to the north and the south.

Peter Gorman stated that the garden wall and other structures are closer than what is there currently.

Member Harper inquired if there were letters from the neighbors.

Member Carman stated that there were letters from both sides that are ok with the variances and the project.

Member Grant inquired if SEQR was needed.

Attorney Brenner stated it is an unlisted action and the applicant provided Part I. The Board needs to complete Part II which would be consideration of whether or not a negative declaration would be appropriate.

Attorney Brenner reads SEQR to Board Members.

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulations? The answer is No.
2. Does the proposed action require a permit, approval or funding from any other government Agency? The answer is Yes. It is a ZBA variance.
3.
 - a. Total acreage of the site of the proposed action? 0.4 acres
 - b. Total acreage to be physically disturbed? 0.06 acres
 - c. Total acreage owned or controlled by the applicant or project sponsor? 0.4 acres
4. Check all land uses that occur on, are adjoining or near the proposed action: Residential (suburban). Rob suggests that the Aquatic box be checked on SEQR form.

Peter Gorman on behalf of applicant says they are ok with checking that.

5. Is the proposed action:
 - a. A permitted use under the zoning regulations? Yes
 - b. Consistent with the adopted comprehensive plan? Yes
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape? Yes
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? No

Attorney Brenner states for the boards edification they put the property address through the DEC EAF mapper tool so the state of NY actually answers that question on their behalf.

8.
 - a. Will the proposed action result in a substantial increase in traffic above present levels? No
 - b. are public transportation services available at or near the site of the proposed action? No
 - c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action? No
9. Does the proposed action meet or exceed the state energy code requirements? Yes

Member Harper inquired if the proposed action will exceed requirements, describe design features and technologies.

Attorney Brenner stated that is a question for the applicant whether the proposed action meets state energy code requirements or does it exceed state energy code requirements?

Peter Gorman stated that it is not really applicable.

Attorney Brenner states that it is consistent with the state energy code requirements it is not going to exceed and provide some special benefit. It is a normal project that is consistent with NYSERTA requirements.

Member Carman inquired if the answer should be No.

Attorney Brenner stated the Board can accept the Agent's answer of yes. It meets the requirements, and the second part of the question is irrelevant because it doesn't exceed.

10. Will the proposed action connect to an existing public/private water supply? Yes

Attorney Brenner stated the answer there should be No instead of yes because applicant is not proposing a new dwelling or any type of structure that's going to use water. It is not connecting to a public or private water supply. So, the answer should be No.

11. Will the proposed action connect to existing wastewater utilities? Yes

Attorney Brenner stated the answer should be No because the proposed project is not connecting to the septic system.

12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? No
- b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? Yes

Attorney Brenner stated that Question 12b is a question answered by the NYS EAF Mapper tool so they are saying the project site, or any portion of it, located in or adjacent to an area designated as sensitive and what is triggering that answer of Yes is Canandaigua Lake.

13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state, or local agency?

Attorney Brenner stated again that the autofiller checks Yes, and that's Canandaigua Lake.

- b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? No
14. Identify the typical habitat types that occur on or are likely to be found on the project site. Check all that apply: Shoreline and Suburban boxes are checked.
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? No
16. Is the project site located in the 100-year flood plan? No
17. Will the proposed action create storm water discharge, either from point or non-point sources? No
If Yes,
 - a. Will storm water discharges flow to adjacent properties?
 - b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:

Member Harper inquired on discussion of putting in permeable surfaces.

Attorney Brenner stated that it is a question for the Board to consider if you they the solid surfaces that are being proposed are going to substantially alter drainage or runoff in the area. He suggested not to consider it.

Member Grant agreed to not consider it.

Member Carman agreed and stated that particularly on that south side that the soil is hard clay and shouldn't make a difference.

18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? No
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? No
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? No

Attorney Brenner suggested with part I completed if the Board is so inclined they could make a motion that the project has no significant adverse environmental impact and issue a negative declaration.

Member DeMallie offered to make a motion

Member Harper offered a second to the motions on the floor. All were in favor of accepting.

Member Harper inquired on the surface type on the walkway.

Peter Gorman confirmed that it would be of a broom finished on the concrete.

Member Harper inquired on the water mitigation.

Peter Gorman stated that it is not being increased that much and it is hard to calculate for that size area.

CEO Kane invited Public Comment. There were no further comments.

Without further public comment, Chair Parshall closed the public comment portion of the meeting.

Member Carman offered to make a motion to grant the three (3) variances for the project.

Member DeMallie offered a second to the motions on the floor. The variance criteria are as follows:

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created: Yes No

Reason(s): No appreciable change in the neighborhood is going to take place as a result. Very low profile, walkways are flat with ground level. Retaining wall on the north side is in keeping essentially with what others have done.

2. Whether the benefit requested by the applicant could be achieved by some method, feasible for the applicant to pursue, other than a variance: Yes No

Reason(s): Applicant looked at alternative ways to find a solution which included a tram and selected the lifts as the best option in keeping with the neighborhood, this is less obtrusive than other alternatives and the best approach to make the property more accessible from a handicap standpoint.

3. Whether the requested variance is substantial: Yes No

Reason(s): The project is warranted in order to make the property more accessible and meet the needs of the disability that is being addressed.

4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district: Yes No

Reason(s): The features that are going to be put in place are all low profile, meaning at ground level, or a minimal height (30' garden retaining wall on N side). From view standpoint it is not going to show up or stick out in any manner that would be objectionable. As stated, the waterfront setback is less nonconforming than existing stairway that is there that is being replaced.

5. Whether the alleged difficulty was self-created: Yes No

Reason(s): The need for this was not self-created. We are granting the variance to address an ADA type of need with respect to owner accessibility.

After careful review of the findings for criteria of an Area Variance, the board members stated variance request (#121621) the benefit to the Applicant DOES outweigh the detriment to the character, health safety and welfare of the neighborhood and therefore the variance request is granted:

Member Harper inquired if they wanted to apply any condition about the trees.

Member Grant stated she didn't think they should worry about it.

Member Carman suggested not to worry about it in this case. Both of the neighbors value their privacy and he feels quite certain that if the trees or shrubbery needs to be replaced that the applicant will replace them.

Peter Gorman stated that they would, and he didn't think Mr. Rainaldi would have a problem with that.

Chair Parshall asked if all were in favor of granting these three (3) variances. Motion carried all in favor.

Roll Call Vote:

Rebecca Parshall, Chair:	aye	Elizabeth Grant:	aye
Ted Carman:	aye	Richard DeMallie	aye
Win Harper (alt)	aye		

Draft Minutes from December 16, 2021 were reviewed approved. The motion so carried with all Board Members present voting in favor. None opposed.

Chair Parshall entertained a motion to close the Public Hearing. Board Member Grant made the motion and Board Member DeMallie offered a second. The motion so carried with all Board Members present voting in favor. None opposed.

Meeting adjourned at 7:46 pm.
Draft Minutes submitted by LA Chamberlain
Minutes approved on March 3, 2022