

Town of Middlesex / Zoning Board of Appeals Public Hearing

Minutes March 3, 2022

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

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

Public Present: Austin Liddiard, Town Board member, Rocco Venezia (Venezia), Logan Rockcastle (Marks Engineering), Rob Testa, Mark Gould, Ingrid & Brian Watkins, Bob & Nancy Finger, Bill Scott, Jim Ghostlaw

Public Hearing was called to order at 7:02 p.m.

Chairman Parshall was in attendance and opened the public meeting with a reminder that the Planning Board decision needs to be made within 62 days after the hearing is closed if a decision is made, appeals under Article 78 need to be made with 30 days after a Zoning Board of Appeals decision. All members were present. If a variance is granted, it is the minimum variance necessary with conditions (if needed). The variance granted goes with the property not the owner.

Old Business

1. App #111821-ZBA/ Richard Testa owning property at 958 South Lake Road, Tax ID # 21.25-1-8 (LR), represented by Venezia Engineering is requesting two (2) area variances.

Rocco Venezia gave a brief description of the project stating that there are some upscale changes including not preserving the house but taking the house down. This allows to rebuild in same footprint with less or almost the same setbacks and update the construction. Lot coverage is the same. An additional variance is required for the grass driveway which is 15' off property line. Underground structure on the driveway. From an appearance standpoint it is conforming. Three (3) variances are being requested. The side setbacks which are the same or less than what they were with the house as it sits now, lot coverage which is 22% when 20% is acceptable, and the driveway. A display of the floor plan was shown with a view of the house from the front. From the lake it is higher because of the walk-out level.

There was a discussion on the word “razed” used on the map. This term was used to signify new construction and that the existing structure will be removed. The Board advised that, per the zoning code, 50% of the existing structure/foundation needs to remain in order to be grandfathered in with the setbacks. The structure could be raised and utilize 50% of the existing structure or a re-submission for a complete tear down. The applicant’s agent expressed that it would be a problem to save the existing footprint due to flooding damage. Additional variances are required with a total re-build and the new variances will need to be advertised.

The current septic, upon review, is a seepage pit at the lake. Once discovered by the Canandaigua Water Shed that it was a seepage pit at the waterfront, an addition, rebuild, new construction, was no longer an option with current septic. As a result, the old septic system will be capped and closed and is in the process of being approved. A brand-new septic system will be installed.

The Board requires a new submittal for a total demo which includes five (5) variances. The existing 9', would be a variance, the existing 12.2' would be a variance, a variance on the south side of 8.7', the driveway and the lot coverage.

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

Application will be tabled until the April 7, 2022 meeting.

New Business

2. App #020922-ZBA/ Mark & Carol Gould owning property at 662 Fisher Road, Tax ID # 11.50-1-11 (LR), represented by Marks Engineering is requesting two (2) area variances.

Logan Rockcastle with Marks Engineering gave a summary of the application showing photos of the project. This is a resubmission with significant changes to comply with zoning code and UDML. The request is for a 0' setback from the mean high water. The proposed structure mimics the last structure but is significantly smaller and is designed to be more compliant as a result of Planning Board comments at a prior meeting. The previous design extended way past onto the pier. This new design follows the code having a variance from the mean high water mark. It requires the removal of the existing roof and will be replaced with an extended roof - the sides will remain open as it is currently. Also, there is a willow tree down by the lake that needs to be removed. It is deteriorating due to the damage caused when the Town wall fell onto it and is currently being held up by a board. This new extended roof will serve as a replacement of the tree and provide shade next to the lake.

Chair Parshall invited public comment. CEO Kane read a letter from a neighbor stating that she believes zoning laws should be enforced once a variance is made. It sets precedents for others to follow that is to ask for other variances. There were no other public comments, therefore Chair Parshall closed the public comment portion of the meeting.

Board Member Carman stated that this request represents a significant change based on the zoning and its waterfront location and, if approved, would lead to additional similar requests. There have been many requests of this type for beach accessory structures and modifications which were denied. There are other means to achieve shade on the waterfront, such as a retractable awning or sunshade (there are examples of those on the west side) it would be attractive and still may require a variance but is not a permanent structure going further into the setback. That could be done without building out closer to the waterfront or up to the mean high water. On the waterfront any significant change relating to zoning and setback goes against the intent of the regulation which is designed to protect all residents, abutters and takes into consideration people's viewshed and space protection. The proposed project could lead to many adverse impact issues on the waterfront even potentially impacting the Uniform Dock and Mooring Regulations. The setbacks are there for everyone's protection and based on sound reason.

Board Member **Carman** made a motion NOT to approve the area variance and Board Member **Harper** provided a second to the motion. The motion so carried with the following:

Roll Call Vote:

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

After complete review of the file and the testimony given at the Public Hearing, and after due deliberation, the findings of fact were noted. Refer to the Findings and Decision form found on the Town's website.

Without further discussion and after consideration of the five factors for the variance request, it was resolved that the variance requests were DENIED because the benefit to the Applicant DOES NOT outweigh the detriment to the character, health, safety and welfare of the neighborhood.

3. App #021722-ZBA/ Brian & Ingrid Watkins owning property at 1327 S Lake Road, Tax ID # 21.79-1-7 (LR), represented by Marks Engineering is requesting five (5) area variances.

Logan Rockcastle gave a brief introduction of the application which is a request for five (5) variances for a new build on an existing structure and he also distributed pictures showing the existing structure. The site is quite steep and there has been erosion on the driveway. The variances are trying to remediate to regrade the driveway which is currently on a 25% slope and is not working.

For the site to work, a 15% grade driveway up to the new house is being proposed. This requires retaining walls. There is a 13.7' setback for a concrete retaining wall in the front and a 12.5' setback for the upper retaining wall which will connect with the front retaining wall to help preserve the existing septic. The proposed walls are 2.5' to help with the steep slope and grading driveway for pavement. There is another variance for a retaining wall that will help build a swale on the top side as there is run-off coming off the steep slope. The plan is to divert the run-off into catch basins and slow the movement of water before it comes down to the existing culvert at the bottom of the property.

Lastly, there is a variance for a stairway and deck on the south side, the existing deck is 11.4' from the southern property line and is larger and non-conforming compared to the proposed deck. The new deck is more of a walkway towards the side of the house. The stairs in the back are to have better access to the storage above the garage as it is currently difficult to access. They are incorporating the old house into the new house and no foundation will be removed. Mr. Rockcastle also provided architectural drawings and photos showing the erosion to the preexisting driveway. There is no change to the layout of the driveway, just fixing the drainage.

Board Member Carman inquired on the criteria in upper left corner of the plans which shows that the existing structure is greater than 35' high. Mr. Rockcastle confirmed that is incorrect and should be less than 35'.

The Watkins stated that the prior owner was barely there, and no maintenance had been done to the site for 30 years. Since the primary goal is to make this their permanent residence, it is important to make the driveway functional in all the seasons. The drainage is bad and will involve a lot of work to improve the property.

There are four (4) trees in the front and two (2) of them are being saved. There will be new electrical lines. Currently the power lines are too close to the house, they are supposed to be 15' on either side. The powerline will be from the same pole as the neighbor to the south. The installation of 2 new poles is required to bring the lines up to the pole. Internet and phone use the same poles so the wires cannot be buried. The new house will be a little farther west than the existing house because of the balcony on the 2nd floor.

Board Member DeMallie noted a miscalculation in the variances. Below are the old and new calculations:

Old calculations	New calculations
46.3'	13.7'
12.5'	2.5'
8.1'	6.9'
12'	3'
11.4'	3.6'

CEO Kane read letters and comments from the neighbors in support of the project. Also included was an attachment of preliminary NYSEG agreement between the parties. Ms. Kane stated that full site plan review from the Planning Board will be required.

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

Board Member **DeMallie** made a motion to grant all five (5) variances be granted and Board Member **Grant** provided a second to the motion. The motion so carried with the following:

Roll Call Vote:

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

After complete review of the file and the testimony given at the Public Hearing, and after due deliberation, the findings of fact were noted. Refer to the Findings and Decision form found on the Town's website.

Without further discussion and after consideration of the five factors for the variance request, it was resolved that the variance requests were GRANTED because the benefit to the Applicant DOES outweigh the detriment to the character, health, safety and welfare of the neighborhood.

4. App #021822-ZBA/ William & Jan Scott owning property at 818 Green Cove Drive, Tax ID # 11.74-1-53 (LR), is requesting five (5) area variances.

Bill Scott introduced himself and his contractor, Jim Ghostlaw. His property spans 160' down green cove from south to the north. Five (5) variances are being requested: one for the lot size, an addition coming off the existing icehouse to the south which requires an overhang coming off the middle of the structure at 17.5' from the mean high water mark and the shed roof at the southwest corner at 20.1', and two (2) proposed additions (garage and house), the shed, driveway, and patios. There was an existing patio that went off the west side of the icehouse towards the lake. It went straight and didn't curve around to the side as shown in the drawings. The patio on the north side, which requires a 4' variance, was too close to the fence. Once the debris was removed that washed up on this patio over the years, it was just large pieces of slate and were removed when construction started. The patio could easily be redesigned to be within the 15' district requirement. The goal is to pave the driveway and have pavers on the patio on the west side and walkway from the driveway. This totals 34% coverage. If the driveway and one or the other walkway or patio were permeable, variances would not be necessary, and the lot coverage would be down to under 20%. The plan is to have the pavers on the lakeside permeable. It was discussed that being a new project, the lot coverage needs to come down to be more compliant with the code.

The stairs on the south side of the icehouse towards the southwest corner, which are 14.7' from the mean high water to the corner of the bunk, requires a 23' variance. The stairs were inadvertently omitted from the plans. They were originally going to put the stairs on the west side to the front and it was reconfigured and brought around to be more compliant with the setback. This additional variance for the stairs was in the public notice for this meeting.

There was discussion of moving the proposed house addition to the east to reduce the front variances. Mr. Scott's architect stated if the angle is changed too much coming off the bunk, then the front entrance where the sidewalk goes from the driveway to the front starts to squeeze in on the garage. He isn't confident as to how that is going to look.

The old septic and one leach line was removed which had not been in operation since the 80s. The leach field is in the southeast corner of the property. The septic and pump tank are off the new structure to the south. An approval for a septic system was received; however, Bill Grove is currently working on submitting a slightly different plan with Tyler who has been on-site and implied that it would be an approved way to go. It would be an Eljen system in the leach field rather than an Aerobic unit.

Chair Parshall invited public comment. The Fingers expressed their concern that there is a lot of pooling in the northwest corner of the field, which at times goes over the road, onto the store parking lot and onto the Scott's property. They met with several folks, including Bill Grove and the watershed folks and are working to try and mitigate that situation. They would like the Scott's to take measures to mitigate their water situation. They are wholly in favor of this project and feel that it will improve the Green Cove Drive aesthetic. What the Fingers are going to do (at the corner east of the store) is dig that out to eliminate the ponding and keep the water moving over Green Cove Drive.

Bill Scott stated that a curtain drain was installed to catch a field tile that was found when they put the curtain drain in. The field tile was coming under the driveway and is the old-style clay pipe that is in approximately 14-16" lengths and just put end to end and over time they separate. There has been some engineering done on the issue with the field and are open for any suggestions to mitigate the water that is coming over the road. Installing a permeable driveway would not allow the water to flow into his garage where the water is currently going.

Board Member Carman stated that the drainage is a Planning Board issue rather than the Zoning Board of Appeals.

CEO Kane stated that Kevin Albany contacted her, and he intended to prepare notes and submit something to the Board. They are working on an agreement that there be an open swale so there would be no setback issues and moving the trees that line the south side of the property. Bill was going to work on something to present so this may be in the idea stage. There is about 8 or 9' from the trees to the edge of the property line on south side.

Bill Scott stated they are exploring the option of a catch basin on the east side of the driveway with a pipe that runs all the way to the lake. It is in the exploratory stages and no calculations have been done as to what the pipe going across North Vine Valley Road would handle.

Since much of the building occupies the space, the drainage is reduced for that piece of property. With the amount of coverage on this lot, water is going to come off the roofs, sit there and it must go somewhere. To help spread, catch, and absorb water the lot coverage needs to be minimized. The patios are just going to push the water off.

Jim Ghostlaw stated that the gutters would be connected to the curtain drain and the foundation drains would be connected to the curtain drains.

Board Member Harper stated that the project will require 3 variances. If the lot coverage is removed then just variances for 17', 22.5' and 19.9' are required. If the applicant makes the driveway, patio, and walkway permeable that would solve a lot of the drainage issue in the front. If not permeable then other mitigation will be required to keep the water from just going into the lake.

This will be a continuation on the April agenda and just requires an updated map. Chair Parshall closed the public comment portion of the meeting and opened the regular meeting of the Town of Middlesex Zoning Board of Appeals.

Draft Minutes from January 6, 2022 were reviewed. A motion to accept as submitted was made by Board Member **Carman** and seconded by Board Member **DeMallie**. The motion so carried with all Board Members present voting in favor.

Without further discussion, Chair **Parshall** entertained a motion to adjourn the meeting of the Zoning Board of Appeals. Board Member **DeMallie** made the motion with Board Member Grant providing a second. The motion so carried with all Board Members present voting in favor. None opposed.

Draft Minutes submitted by Laura Ann Chamberlain
Minutes approved on April 7, 2022